

TEXAS
LAW

Tarlton Law Library
Jamail Center for Legal Research

Citation: *Journal of the Reconstruction Convention: which met at Austin, Texas. Texas.*

Constitutional Convention (1868-1869). Austin, TX: Tracy, Siemering & Co., printers, 1870.

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to rarebooks@law.utexas.edu.

If you are uncertain whether you need permission to use these materials, please contact us at rarebooks@law.utexas.edu.

CAPITOL, AUSTIN, TEXAS,
DECEMBER 12, 1868.

Convention met pursuant to adjournment.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and adopted.

Mr. Slaughter asked that Mr. Butler be excused from regular attendance on the Convention.

Leave granted.

Mr. Armstrong of Lamar asked that Mr. Mundine be excused on account of sickness.

Excused.

Mr. Flanagan, from the Committee on Internal Improvements, reported as follows :

COMMITTEE ROOM,
December 12, 1868.

To the Hon. E. J. DAVIS,
President of the Constitutional Convention :

Your Committee on Internal Improvements have had before them a declaration to incorporate the East Texas Agricultural and Mechanical Association. Upon investigation they find it simply a local matter and of a nature that certainly, in their opinion, ought to be approved, for it is well calculated to stimulate and improve the country, and surely has a great influence, and that very favorable to the morals of the same. All things considered I am instructed to report back the ordinance, with a recommendation that it pass.

Respectfully,

J. W. FLANAGAN,
Chairman Committee.

Mr. Flanagan moved a suspension of the rules to put declaration on its passage.

Rules suspended.

Mr. Thomas moved to refer the declaration to the Committee on the Judiciary.

Lost.

The question recurred upon the adoption of the declaration.

It was adopted.

Mr. Flanagan moved a further suspension of the rules to put declaration on its passage.

Upon which the yeas and nays were demanded, and resulted thus :

Yeas—Messrs. President, Adams, Armstrong of Lamar, Board, Brown, Bryant of Harris, Buffington, Burnett, Caldwell, Cole, Curtis, Degener, Downing, Evans of Titus, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Hamilton of Bastrop, Hamilton of Travis, Harris, Johnson of Harrison, Kealy, Kendal, Keuchler, Kirk, Lippard, Long, Mackey, McWashington, Morse, Mullins, Munroe, Newcomb, Patten, Phillips of San Augustine, Rogers, Ruby, Scott, Slaughter, Smith, Stockbridge, Varnell, Watrous, Williams, Wilson of Brazoria, Wilson of Milam, Wright—50.

Nays—Messrs. Armstrong of Jasper, Bryant of Grayson, Keigwin, Sumner, Thomas—5.

So the rules were suspended.

The question recurred upon the final passage of the declaration.

It was read a third time and passed.

Mr. Fayle, from the Committee on Enrolled Bills, reported a follows :

COMMITTEE ROOM,
Austin, December 11, 1868.

Hon. E. J. DAVIS,

President of the Convention :

SIR : The Enrolling Committee have had the following resolutions, numbering from thirty-eight to forty-two inclusive, under consideration, and find them correctly enrolled.

No. 38. A resolution for the payment of the per diem of William Horne, a member of this Convention.

No. 39. A resolution appropriating \$15,000 to pay officers appointed by Governor A. J. Hamilton.

No. 40. A resolution referring a resolution for the appropriation of \$25,000 to Major-General Reynolds.

No. 41. A declaration incorporating the Belleville, Hempstead and Brazos Bridge Company.

No. 42. A resolution authorizing the Secretary to pay Fred.

Slaughter one dollar and fifty cents per day as mail carrier of the Convention.

Respectfully,

WM. R. FAYLE,
Chairman Enrolling Committee.

Mr. Flanagan, Chairman of the Committee of Internal Improvements, reports as follows :

COMMITTEE ROOM,
December 12, 1868.

To the Hon. E. J. DAVIS,
President Constitutional Convention :

SIR : Your Committee on Internal Improvements have had before them a petition and declaration presented by the Hon. N. Patten, asking the Convention to pass the accompanying ordinance, allowing the legal voters in the counties of McLennan and Falls, to hold an election and to vote for or against said tax, as expressed in said petition and ordinance.

Your committee having carefully examined the same, find it strictly a local matter, and at the same time come to the conclusion that it is a very worthy and important one, calculated to work great good for those counties immediately interested, including the commerce of the large and rapidly growing city of Waco.

The premises all considered, I am instructed to report back the ordinance and recommend that the same pass.

Respectfully,
J. W. FLANAGAN,
Chairman.

AN ORDINANCE

To authorize the levy and collection of a special tax in Falls and McLennan counties to aid in the construction of the Waco Tap Railroad, and for other purposes.

SECTION 1. *Be it declared by this Convention*, That the county judges respectively of the county of McLennan and the county of Falls shall cause polls to be opened, and an election to be holden at the town of Waco, in McLennan county, and the town of Marlin, in Falls county, within forty days from the final passage hereof by this Convention, or as soon thereafter as practicable, and shall give

public notice of said election for at least twenty days, by publication in newspapers, posters or bills.

SEC. 2. At said election so holden, the qualified voters of each county shall determine by ballot whether a special tax shall be assessed and collected upon all the property in their said respective counties taxable under the laws of the State, to aid in the construction of the Waco Tap railroad; and at said election the voters in favor of said special tax shall write or print upon their ballots the words, "For the tax," and those opposed to the special tax shall write or print upon their ballots the words, "Against the tax."

SEC. 3. Said county judges shall, on the day or days respectively designated by them for the election, open the polls at the court houses in their counties, and with the assistance of two clerks, to be appointed by them respectively, shall give to each qualified voter in their respective counties a full and fair opportunity to cast his ballot freely, as he may choose. The poll shall be opened at ten o'clock, A. M., and shall be closed at four o'clock P. M., for two successive days. The said county judges, assisted by their clerks, shall count out the ballots, and shall file in the county clerk's office of their respective counties a full statement of said vote.

SEC. 4. Should a majority of the votes cast in either or both counties be for the tax, then the county court of either or both counties thus voting, shall enter an order on the minutes of the said court, declaring that the special tax provided for by this ordinance is imposed, and shall be assessed and collected, and shall enter an order that the assessor and collector of the county do proceed to assess and collect the same.

SEC. 5. It shall be the duty of the assessor and collector of the county, in obedience to said order, to make immediately an assessment of three per cent. ad valorem of all the property in his county taxable under the laws of the State in force, and to collect the same in manner as follows, to wit: One per cent. thereof on or before the first day of July, 1869, and one per cent. thereof on or before the first day of December, 1869, and the remainder on or before the first day of June, 1870; and in assessing and collecting this tax the assessor and collector shall conform to the several laws in force at the time, so far as the same may be applicable and not inconsistent herewith.

SEC. 6. The deeds of the assessor and collector to the property sold for taxes, assessed by virtue of this ordinance, shall be good and effectual to convey the title, and shall be conclusive evidence that all the requisites of the law have been complied with, and shall be subject to be impeached only for fraud. Provided that the owners of property thus sold (if it is real estate) shall be entitled at any

time within twelve months after sale to redeem the same, by paying to the purchaser five times the amount paid by him for the land, and five times the amount of taxes that may have been paid by said purchaser on said property since the sale.

SEC. 7. The assessor and collector, before entering upon his duties under this ordinance, shall give bonds, with two or more good and sufficient securities, in the sum of twenty-five thousand dollars, conditioned for the faithful performance of his duties under this ordinance, and payable to the president and directors of the "Waco Tap Railroad Company," and to be approved by them; and said bond to be filed in the office of said company; and suit thereon shall be for breach of any of its conditions, to the full amount thereof, in favor of said company. The assessor and collector shall receive for compensation for duties under this ordinance one-half the amount allowed by general laws for similar duties; and he shall pay over to the treasurer of the Waco Tap Railroad Company the money collected under this ordinance, as fast as the same may be collected, and shall take duplicate receipts from the treasurer for the same, one of which shall be filed in the office of the county clerk of this county.

SEC. 8. The assessor and collector shall give to each taxpayer under this ordinance his official receipt for the sum paid or collected, which receipts may be consolidated, and shall, when presented to the president and directors of said Waco Tap Railroad, in sums of fifty dollars, entitle the holder thereof to receive a certificate of paid up stock in said road for one share, and an additional share for each additional fifty dollars of receipts, which certificates shall entitle the holder to all the rights and privileges of stockholders in said railroad company.

SEC. 9. In case of vacancy in the office of county judge, or his absence, inability or refusal to act, any one of the county commissioners may discharge his duties under this ordinance. By qualified voters, mentioned in this ordinance, is meant registered voters, who shall vote only in the county in which they are registered.

SEC. 10. If a new constitution for the State of Texas shall go into force and effect before the provisions of this ordinance shall have been executed, and by the provisions of the same, or the laws passed in pursuance thereof, the tribunal or any of the officers charged with the execution of this ordinance, shall cease to exist, as provided for by existing laws, then the tribunal or tribunals and officer or officers succeeding under the new constitution and laws to the jurisdiction and duties now held, exercised and discharged by the tribunal and officers named in the preceding sections of this act, shall be required to execute the provisions of this ordinance; and if additional legislation shall be deemed necessary to carry out and effectuate the

provisions of this ordinance, the same shall be enacted by the first Legislature convening under the new constitution; and this ordinance shall take effect from and after its passage by this Convention.

Mr. Flanagan moved a suspension of the rules to put the declaration, as reported, on its passage.

Rules suspended.

The question recurred upon the adoption of the declaration.

It was adopted.

Mr. Patten moved a further suspension of the rules to put declaration on its passage.

Upon which the yeas and nays were demanded, and resulted thus:

Yeas—Messrs. President, Adams, Armstrong of Lamar, Bledsoe, Bryant of Harris, Buffington, Butler, Caldwell, Cole, Curtis, Degener, Downing, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Harris, Johnson of Harrison, Keigwin, Kendal, Kuechler, Kirk, Lippard, Long, Mackey, McWashington, Morse, Mullins, Munroe, Newcomb, Patten, Ruby, Schuetze, Scott, Slaughter, Smith, Stockbridge, Varnell, Watrous, Williams, Wilson of Brazoria, Wilson of Milam—43.

Nays—Messrs. Armstrong of Jasper, Board, Bryant of Grayson, Burnett, Hamilton of Bastrop, Phillips of San Augustine, Rogers, Sumner, Thomas—9.

Rules suspended.

On motion of Mr. Patten, the reading of the declaration was dispensed with.

The question recurred upon the adoption of the declaration.

It was adopted.

Mr. Smith, of Galveston, offered the following resolution:

Resolved, That a special committee of three be appointed by the President to investigate the right of the gentleman from Leon to a seat in this Convention.

Mr. Thomas, of Collin, offered the following resolution:

Resolved, That this Convention do now resume the consideration of the report of the Committee on Education, and continue to consider the same from day to day until it shall have been disposed of.

Mr. Munroe offered the following resolution:

2D SESS.—3

Resolved, That the per diem pay due the late W. H. Mullins be paid over to his widow for her benefit, and that Hon. L. D. Evans be authorized to draw and receipt for the same, and that the Hon. P. P. Adams, of Henderson, and McCormick, of Brazoria, having been absent by leave of this Convention, be authorized to draw their per diem pay during said absence.

Mr. Munroe moved the rules be suspended to consider resolution. Upon which the yeas and nays were demanded and resulted thus :

Yeas—Messrs. President, Armstrong of Jasper, Armstrong of Lamar, Bellinger, Board, Bryant of Grayson, Buffington, Burnett, Caldwell, Cole, Degener, Downing, Evans of Titus, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Harris, Johnson of Harrison, Jordan, Keigwin, Kuechler, Kirk, Long, Mackey, McWashington, Munroe, Ruby, Schuetze, Scott, Slaughter, Smith, Stockbridge, Thomas, Varnell, Watrous, Wilson of Brazoria—38.

Nays—Messrs. Bledsoe, Brown, Bryant of Harris, Butler, Curtis, Hamilton of Bastrop, Kendal, Morse, Mullins, Patten, Phillips of San Augustine, Rogers, Williams, Wilson of Milam, Wright—15.

Rules suspended.

The question recurred upon the adoption of the resolution.

Mr. Armstrong, of Lamar, moved to amend by inserting the name of B. N. Gray, of Red River county.

Mr. Burnett offered the following resolution :

Resolved, That the resolution now under consideration be referred to a special committee of three, whose duty it shall be to report to the Convention the names of each delegate who may be entitled to back pay.

The resolution was adopted.

Mr. Armstrong, of Lamar, offered the following resolution, and asked its reference to the Committee on the Judiciary.

1. *Be it declared by the people of the State of Texas in Convention assembled :*

That in all suits now pending, or that may hereafter be instituted in any of the courts of this State, founded upon any bill, bond, note, or other contract in writing, made between the second day of March, A. D. 1861, and the first day of July, A. D. 1865, it shall be lawful to show by parol testimony the actual consideration of

such contract, and if the same be founded upon a good and lawful consideration, the real or true value thereof at the time of the performance of such contract, may be proved by parol testimony.

2. *Be it further declared*, That in all suits now pending, or that may hereafter be instituted in any of the courts of this State, founded upon a good and lawful consideration or cause of action, which accrued prior to the second day of March, A. D. 1861, and it shall appear on trial that the same has been paid off and discharged in any pretended currency, issued and put in circulation during the existence of the late rebellion, and in aid of the same, such payment shall be null and void, and the creditor shall recover as though no such payment had been made, unless it be shown that he voluntarily sought the debtor and demanded the same; and the creditor shall retain all liens that he or she may have had on real or personal property for the security of such claim against all third persons who may have purchased such property with notice of such payments, and against all persons who may have purchased the same, with or without notice, and paid the price thereof in such unlawful currency; provided, that this ordinance shall not be so construed as to include payment made in the lawful money of the United States; and provided further, that it shall be construed to have reference to payments only made subsequent to the second day of March, A. D. 1861, and prior to the first day of July, A. D. 1865.

3. *Be it further declared*, That all sales or transfers of real, personal or mixed property heretofore made in consideration of the payment of any pretended currency, issued and put in circulation in aid of the late rebellion, shall be null and void as to all prior *bona fide* creditors of the vender of such property.

4. *Be it further declared*, That in any suit now pending, or that may hereafter be brought in any of the courts of this State, wherein any question under either of the two last subdivisions of this ordinance shall arise with reference to any statute of limitation, the time between the second day of March, A. D. 1861, and the first day of January, A. D. 1869, shall not be computed in the reckoning or application of such State.

Mr. Sumner moved to reject the declaration.

Withdrawn.

The declaration was referred to the Committee on Judiciary.

Mr. Caldwell introduced a declaration, and asked its reference to the Committee on Internal Improvements without reading.

It was so ordered.

The President announced that the business in order was upon the

declaration of Mr. Newcomb's resolution to suspend the rules of the House in reference to "Division of the State,"* and upon the motion of Mr. Evans, of Titus, to excuse Mr. Grigsby.

Mr. Hamilton, of Travis, moved a call of the House.

Call sustained.

On motion, Mr. Pedigo was excused on account of sickness.

Mr. Burnett made the following point of order :

That when a "call of the House" is ordered, the names of members who may not have taken their seats since the re-assembling of this Convention, shall not be called nor noted as absentees.

The President decided that the point of order could not be entertained by the chair under the ruling of yesterday.

Mr. Burnett appealed from the decision of the chair to the Convention.

The question recurred, "Shall the decision of the chair stand as the decision of the Convention?"

Upon which the yeas and nays were demanded and resulted thus:

Yeas—Messrs. Armstrong of Jasper, Armstrong of Lamar, Bellinger, Bledsoe, Bryant of Grayson, Bryant of Harris, Buffington, Caldwell, Cole, Curtis, Fleming, Glenn, Hamilton of Travis, Harris, Johnson of Harrison, Kealy, Keigwin, Kirk, Lindsay, Mackey, McCormick, McWashington, Phillips of San Augustine, Rogers, Schuetze, Stockbridge, Sumner, Thomas, Watrous, Williams, Wilson of Brazoria, Wilson of Milam—32.

Nays—Messrs. Adams, Board, Brown, Butler, Burnett, Degener, Downing, Evans of Titus, Fayle, Flanagan, W. Flanagan, Gaston, Goddin, Hamilton of Bastrop, Jordan, Kendal, Kuechler, Lippard, Long, Morse, Mullins, Munroe, Newcomb, Patten, Ruby, Scott, Slaughter, Smith, Varnell, Wright—30.

So the decision of the chair was sustained.

Mr. McCormick offered a resolution, which was ruled out of order :

Resolved, That when action in any matter taken into consideration by the Convention is suspended by a call of the House, the Convention shall proceed to take up the matter next in order on the President's table, and dispose of it, and after it is disposed of, the matter on which action was so suspended shall be called up again for action; and if the call is renewed and still sustained, and action

* To be found in proceedings of December 10th.

thereby still sustained, the next matter of business on the President's table shall be taken up and disposed of, and so on indefinitely, that the time of the House may not be unnecessarily consumed.

On motion, the Convention adjourned until ten o'clock Monday morning.
