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CAPITOL, AUSTIN, TEXAS,
DECEMBER 16, 1868.

Convention met pursuant to adjournment.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and adopted.

Mr. Armstrong, of Lamar, presented the following memorial from Memphis and El Paso Railroad Company, and asked its reference to the Committee on Internal Improvements:

MEMORIAL

Of the Memphis, El Paso and Pacific Railroad Company.

To the Honorable the Constitutional Convention of Texas :

The memorial of the Memphis, El Paso and Pacific Railroad Company respectfully shows that the said company was incorporated under an act of the Legislature of Texas, approved February 4, 1856, and acts supplemental thereto and amendatory thereof, for the purpose of constructing and operating a railroad from the eastern line of the State, in Bowie county, to the Rio Grande, opposite to or near El Paso, and afterwards was authorized to build a branch to or to extend to Jefferson, in Marion county, which city now properly constitutes the commencement point of said road in Texas.

That all the conditions contained in said act of incorporation, up to the date of the so-called ordinance of secession, have been in every respect fully complied with; that one million of dollars of *bona fide* stock was subscribed by the citizens of the State living along the line of the road; that a large amount of this was paid into the treasury of the company, and expended in the prosecution of the enterprise; that at least five hundred thousand dollars, including two hundred and fifty thousand acres of land certificates donated by the State, have been expended in designating the line of the road to El Paso, in accordance with the requirements of the charter, in surveying and returning to the General Land Office the field notes and maps of the land within the reservation, which has been done from the eastern line of the State to the Brazos, a distance of three hundred miles, in grading, including bridging and culverts, and cross ties; that, at the time the war commenced, about

sixty miles of the road bed was completed and ready for the iron, Fifty-five miles had been examined by the engineer of the State, and received, and certificates for land issued upon it, in accordance with the provisions of the charter; that a contract had been made for iron for fifty miles, which was then on the way, and was seized in New Orleans by the Confederate authorities, and appropriated by the same without the consent, but in despite of the company; that after various ineffectual efforts upon the part of the company, since the war, to revive this enterprise and go on with the construction of the road, it has at last succeeded in reorganizing upon a basis and under auspices which promise entire success in building and equipping the railroad, and in settling the country along the line of the same as fast as it is completed, with a people given to agriculture, manufactures and mechanical pursuits, such a people as will force upon us peace and prosperity; that this negotiation has been so effected as to save to every citizen of the State who has ever subscribed and paid anything into the company, his interest in it, proportionate to the amount paid, or that may hereafter be paid; that it has memorialized the Congress of the United States for national assistance, by granting to it a subsidy, and placing it under the name of the "Southern Trans-Continental Railroad," upon the same footing of the Union Pacific and other Pacific railroads, now being built by the aid and under the auspices of the national government, with a rapidity which has no parallel in the history of such enterprises.

That your memorialists, in accordance with the authority conferred upon them in their charter, have recently entered into arrangements with other roads already constructed, looking to the consolidation of all the roads necessary to constitute one grand trunk line, from the point of Norfolk, Virginia, via Memphis, to the Pacific (adopting the designated line of the Memphis, El Paso and Pacific Railroad Company through the State of Texas), on the Gulf of Guaymas, or San Deigo, or at both points, and have caused a bill to be introduced into Congress to aid it, under the name and style of the Southern Trans-Continental Railroad, and to place it upon the same footing as the other Pacific railroads, backed by such influences and under such auspices as insure success, if the State of Texas will come to its aid, and support it in the manner hereafter pointed out by this memorial.

The scheme embraces in addition to the main trunk line, as above indicated, branch roads from Cairo, intersecting the main line on the eastern border of Texas, branches from Vicksburg, via Shreveport, Marshall, etc., and from New Orleans, via Houston, and from some point upon the Gulf of Mexico intersecting the main line at some point or points in Texas; and the obtaining of national aid to as

many of these branches, in addition to the main trunk, as possible. The deep interest of Texas in the consummation of this scheme is too obvious to require argument. It would inaugurate a new era, and more than compensate for the pecuniary losses occasioned by the late war; it would add countless millions to the value of her now waste and valueless lands, and fill her, as if by magic, with a teeming population, and bring the accomplishment of this result within her grasp. To this end your memorialists invoke the favorable action of your honorable body, representing, as it does, the State and the interest thereof, and the only body now authorized to speak and act for the State upon the following points, which, in the opinion of your memorialists, will greatly contribute to the end desired:

First—Your memorialists pray that you will, in the name of the State, and in behalf thereof, petition the Congress of the United States to aid the Southern Trans-Continental Railroad, and place the same upon an equal footing with the other Pacific railroads. The designated line of the said road presents many advantages for a national thoroughfare over any other north of it, by reason of its shorter distance, of the character of the country through which it passes, capable of sustaining a dense population, and never liable to interference from ice or snow. When completed, a great part of the commerce of the world must pass over it, and it will unite in closer and more indissoluble bonds the remote sections of the Union.

Second—That as the United States has, as one means of aiding the construction of the Pacific railroads, donated to them the alternate sections for a distance of twenty miles upon each side of the line of the same, besides a loan of an average of about thirty thousand dollars per mile; and as the United States does not own any lands in Texas, and cannot aid this road in this way, so far as its line is within the limits of Texas, your memorialists pray that Texas, the proprietor of the public lands in her limits, do for this road what the United States has done for the Pacific roads passing through her public lands, to wit: enlarge the reservation hitherto granted to the Memphis, El Paso and Pacific Railroad Company, so as to extend the same twenty miles upon each side of the designated line, with the conditions and restrictions contained in the original charter. Your memorialists believe that an opportunity now offers for securing within the limits of this State one of the Pacific roads, it may never occur again. Such action on the part of the State would concentrate and fix public attention upon the enterprise, and secure the speedy construction of the road; it would render certain that which is now doubtful. After such action by the State, Congress would not hesitate in coming to the aid of the enterprise in behalf of the national interest involved.

Third.—Your memorialists have recently succeeded in making arrangements with capitalists in the United States and Europe, who have undertaken to furnish a portion of the money necessary for the construction of the road, and they confidently expect to be able to recommence work upon the road as soon as Texas is restored to her proper relations in the Union, but grave doubts have arisen in the minds of some as to the validity of the acts of the *de facto* Legislatures of Texas during the war, which provided that the time of the war should not be computed against incorporated internal improvement companies, and providing that they should have two years after the war to complete the work required by their charters, etc. Now, in order to set at rest forever such doubts, your memorialists pray that your honorable body will pass such an ordinance or declaration as is necessary, declaring that the time intervening between the passage of the so-called ordinance of secession and the restoration of the State, shall not be reckoned against the company, but that it shall have the same time after the restoration of the State as if no time had elapsed since the second day of March, 1861.

Your memorialists believe that this prayer is so reasonable and just, that whatever may be the fate of the other prayers that your honorable body will not deny it.

Fourth—In accordance with the charter, the State has, for grading fifty-five miles of the road, issued to the company land certificates for about 250,000 acres of land. These certificates have all been transferred to third persons for work and labor upon the road, and many of them have been often transferred. They are absolute and unconditional upon their face, and patents have been issued to lands located by them in some instances; but patents are now refused upon them upon the grounds that they were improperly issued. The company performed all that was required by its charter, and they were regularly issued by the Commissioner of the General Land Office. For the State to now repudiate them, brings discredit upon the whole scheme of aiding railroads in the State by grants of land; besides, this is injustice to innocent holders for valuable consideration. If there is any fault it is not in the holders, nor in the railroad company. It is therefore respectfully suggested that the Convention declare, by some proper act, these certificates valid, and thus remove all doubts as to title to lands derived through them.

Fifth—It is the proximity of lands to the line of the contemplated railroad which makes them valuable and available in the construction. This is why the grant of lands in Texas has contributed so little aid in comparison to what was done in Illinois. Here the lands given in most instances have been remote from the line. The Memphis, El Paso and Pacific Company, by its charter, is entitled

to the alternate sections for eight miles upon each side of its designated line, and if the land had been vacant, so as to have been available to the road, it would have afforded means for the construction of the road for at least three hundred miles; but it was not so. The lands had, previous to the grant of the charter, been appropriated by surveys, so as to leave but a few thousand acres in each county through the settled part of the State, and, in some, none of value. The grant of this reservation appears to be far more valuable than it really is. The State reserves the even sections. Now, if it is the purpose of the State to aid roads by the grant of lands, it ought to do it in a substantial way, so that her vast domain would not be frittered away, and no corresponding advantage result from it. If the State would release to this road all the land in the reservation, instead of merely the alternate sections to the extent of giving to the road the equivalent of these alternate sections, then substantial and material aid would be given to its construction. Your memorialists therefore pray that your honorable body will take such action as may be necessary to secure to this company such aid as such a donation would afford. Your memorialists now respectfully submit this whole matter to your body, with the earnest request that you will give it that potent consideration, which the magnitude of the interest involved requires, and trust that if you, in your wisdom, do not deem it expedient to grant the specific prayers of this memorial, that you will, nevertheless, give such material aid as will enable your memorialists to go on speedily with the work they have undertaken, and such aid as will justify them in the eyes of the capitalists, whom they have enlisted in the same, by the assurances your memorialists have given, that Texas was anxious to secure one of the Pacific roads through her territory, and that the State would give such aid as was or might be necessary—assurances which they believed they might well give, because of the immense advantage to result to the State, from the construction, across her borders, of such a road, a road that would quicken the sleeping energies of her people, and awaken to life enterprise in every department, and cause the wilderness to blossom as the rose.

B. H. EPPERSON,
 President of the Memphis,
 El Paso, and Pacific Railroad Company.

Attest:

C. B. BERRY, Assistant Secretary.

DIRECTORS.

B. H. Epperson, W. H. Johnson, T. G. Wright, J. C. Moore,

John C. Fremont, of New York; W. G. Snethen, Maryland; Wm. Schmorle, of Pennsylvania; J. M. Daniel, Samuel Hancock.

It was so ordered.

Mr. Armstrong, of Lamar, presented a petition on behalf of the Southern Texas Continental Railroad Company, and asked its reference to the Committee on Internal Improvements.

It was so ordered.

Mr. Brown presented a petition from J. H. Hallongoist, asking the payment of salary as chief engineer of the State.

Referred to Committee of Finance.

Mr. Burnett offered the following declaration :

WHEREAS, It is important that this Convention should be advised whether the condition of the State is such that a fair election could be held at an early day, and if not, that this Convention may ascertain and make known to the Congress of the United States now in session, what additional legislation, if any, is necessary to effect the speedy re-organization in this State of a loyal civil government, and to meet the demands of the people for special and general legislation; therefore be it

Resolved, That the President appoint a special committee, to consist of thirteen members, (said committee to appoint its own chairman, and if necessary, a secretary or clerk,) to enquire into and report to this Convention, at the earliest day practicable, the condition of this State in reference to the enforcement of law and preservation of order, and the probability of the registered voters being allowed or guaranteed free speech and free ballot; and whether, in their opinion, a fair and impartial election could be held at an early day on any constitution that this Convention might submit to the people for their ratification or rejection, and for State, county and municipal officers; and if not, what additional legislation, if any, is necessary to effect the speedy re-organization in this State of a loyal civil government that will protect the people in their lives, liberty and property, and to meet the necessities of the people now existing for special and general legislation; said committee to report by resolution, memorial or otherwise.

Mr. Buffington moved a suspension of the rules to take up the resolution.

Rules suspended.

The question recurred upon the adoption of the resolution.

It was adopted.

Mr. Armstrong, of Jasper, offered the following resolution, and asked its reference to the Political and Legislative Committee :

Be it resolved by the delegates of the people in Convention assembled :

That no person shall be deprived of his property or privileges, or in any manner charged or condemned, for participation in the late rebellion.

It was so referred.

Mr. Wright offered the following declaration :

WHEREAS, The State of Texas was admitted into the Government of the United States under the express provision that there might be four additional States created out of the territory of Texas; and

WHEREAS, A very respectable portion of the people of the State believe that the time has arrived when a division is absolutely necessary to good government and the interest of the people; therefore be it

Resolved by this Convention, That all that part of Texas west of the Colorado river and south of a straight line from Henderson county to the mouth of the Pecos river, be organized into one State. And that all that part of Texas lying north of latitude 32° and east of ——— be organized into another State.

Provided, That authority of the qualified voters ratify this act of the Convention at the election for the ratification or rejection of the constitution to be framed by this Convention.

Laid over under the rules.

Mr. Horne offered the following declaration, and asked its reference to the Committee on Education :

Be it declared and ordained by the delegates of the people of Texas in Convention assembled :

That it shall be and it is hereby made the duty of the present Provisional Governor of this State to cause the Buffalo Bayou, Brazos and Colorado Railroad to be sold for the payment of the indebtedness of the company owning it to the special school fund of the State, which sale shall be conducted in conformity and according to the conditions and specifications described and directed in a declaration passed by this Convention, providing for the sale of the Texas and New Orleans Railroad, and the Southern Pacific Railroad; and the purchaser or purchasers of the Buffalo Bayou, Brazos and

Colorado Railroad shall be subject to the same terms and conditions prescribed in the said declaration already passed by this Convention.

Mr. Degener moved its referuce to the Committee on Internal Improvements.

It was so ordered.

Mr. McCormick offered the following resolution :

Resolved, That when action on any matter taken into consideration by the Convention is suspended by a call of the House, the Convention shall take up the matter next in order on the President's table, and proceed with it until it is disposed of, unless the House becomes full by bringing in all the absentees; and after it is disposed of the matter on which action was so suspended, shall then be called up again, and if the call of the House is renewed, and action thereby still suspended, the next matter of business on the President's table shall be taken up and proceeded with in like manner, and so on indefinitely, that the time of the House may not be unnecessarily consumed. Upon the House becoming full by the bringing in of all the members absent without satisfactory excuse, the action of the Convention on any other matter than that on which the call of the House was made, shall be suspended, and the business which had been suspended by said call of the House shall be proceeded with.

Mr. Lindsay moved that the rules be suspended.

Mr. Flanagan, of Rusk, moved to reject the resolution.

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

Yeas—Messrs. President, Adams, Armstrong of Lamar, Bledsoe, Board, Brown, Bryant of Harris, Buffington, Butler, Burnett, Carter, Curtis, Degener, Downing, Evans of Titus, Fayle, Flanagan, W. Flanagan, Goddin, Hamilton of Bastrop, Harris, Jordan, Kendall, Keuchler, Lippard, Long, Mullins, Munroe, Newcomb, Patten, Scott, Slaughter, Smith, Varnell, Wright—35.

Nays—Messrs. Armstrong of Jasper, Bellingier, Bryant of Grayson, Caldwell, Cole, Fleming, Glenn, Hamilton of Travis, Johnson of Harrison, Kealy, Keigwin, Lindsay, Mackey, McCormick, McWashington, Morse, Phillips of San Augustine, Posey, Rogers, Stockbridge, Sumner, Thomas, Watrous, Williams, Wilson of Brazoria, Wilson of Milam—26.

The Convention rejected the resolution.

Mr. Lindsay offered the following resolution :

It is hereby declared by the people of Texas in Convention assembled, That the presiding officer of this House, in consequence of his incessant and unremitting labors, and the necessary privations to which he is unavoidably subjected during its session to which the individual members of the body are exempted, is entitled to and ought to receive double pay for his services. It is accordingly ordered as the sense of this House that his per diem be so fixed and established for the full period of the present session of the Convention.

Mr. Degener moved a suspension of the rules to take up the resolution.

Rules suspended.

Mr. Degener moved the previous question.

Previous question seconded.

The question recurred, "Shall the main question be now put?"

Main question ordered.

The question recurred upon the adoption of the resolution.

It was adopted.

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

Rules suspended.

Resolution read a third time and unanimously passed.

The President announced the business in order was the resolution of Mr. Newcomb repealing the resolution of Mr. Thomas respecting the "division of the State."

Mr. Sumner moved a call of the House.

Call sustained.

Absentees—Bell, Coleman, Foster, Gaston, Horne, Hunt, Johnson of Calhoun, Mills, Phillips of Wharton, Ruby, Vaughan, Whitmore—12.

Mr. Patten moved to suspend the call.

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

Yeas—Messrs. President, Adams, Bellinger, Bledsoe, Board, Bryant of Harris, Buffington, Burnett, Carter, Curtis, Degener, Downing, Evans of Titus, Fayle, Flanagan, W. Flanagan, Goddin, Hamilton of Bastrop, Harris, Jordan, Kendal, Kuechler, Lippard, Long, Morse, Mullins, Munroe, Newcomb, Patten, Scott, Slaughter, Smith, Varnell, Wilson of Milam, Wright—35.

Nays—Messrs. Armstrong of Jasper, Armstrong of Lamar,

Brown, Bryant of Grayson, Caldwell, Cole, Fleming, Glenn, Hamilton of Travis, Johnson of Harrison, Kealy, Keigwin, Lindsay, Mackey, McCormick, McWashington, Phillips of San Augustine, Posey, Rogers, Stockbridge, Sumner, Watrous, Williams, Wilson of Brazoria—25.

Call suspended.

Mr. Thomas moved a call of the House.

Call sustained.

Absentees—Bell, Coleman, Foster, Gaston, Hunt, Johnson of Calhoun, Mills, Phillips of Wharton, Ruby, Vaughan, Whitmore—11.

The President, according to the rules, ordered that Messrs. Horne, Ruby and Gaston be each fined their per diem for absence without leave.

On motion the Convention adjourned till to-morrow morning at ten o'clock.