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“In prosecutions for the publication of papers investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.”

Mr. McLean's amendment adopted.

Mr. Moore withdrew his amendment, and Mr. Reagan's substitute for the section was adopted.

On motion of Mr. Russell, of Harrison, the Convention adjourned until 9 o'clock A. M. to-morrow, pending section 9 of the Bill of Rights.

THIRTY-THIRD DAY.

HALL OF REPRESENTATIVES, }
AUSTIN, TEXAS, October 13, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by the Rev. Mr. Dodge.

The chair announced the following select committee, to which was referred the article on Education: Mr. Nunn chairman, Messrs. Norvell, Moore, Ross, Ballinger, Martin of Navarro, and Robertson of Bell.

The following communication was presented by Mr. Ballinger:

MATAGORDA COUNTY, October 6, 1875.

To the Hon. E. B. Pickett, President of the Convention.

SIR—In consequence of disasters resulting to me from the recent tornado, I find it impossible for me longer to attend as a delegate to the Convention from the Twelfth Senatorial District, and therefore tender my resignation. Hoping wise and harmonious action by the body over which you have the honor of presiding, I have the honor to be, with great consideration and respect, sir, your most obedient servant.

E. S. RUGELEY.

Mr. Ballinger offered the following resolution:

WHEREAS, The Hon. E. S. Rugelev has resigned his place as a delegate to the Constitutional Convention from the Twelfth District;

Resolved, That the Governor of this State is hereby authorized and requested forthwith to issue a writ of election to said

district to fill said vacancy, by an election to be held on Saturday, 23d day of the present month, and return thereof made within five days thereafter.

Adopted.

Mr. Russell, of Harrison, offered the following resolution:

Resolved, That the following shall be incorporated in the Bill of Rights, under the proper article:

“Importations of persons under the name of ‘coolies,’ or any other name or designation, or the adoption of any system of peonage whereby the unfortunate and helpless may be reduced to practical bondage, shall never be authorized or tolerated by the laws of this State; and neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall ever exist in this State.”

Referred to Committee on Bill of Rights.

Mr. Erhard offered the following resolution:

Resolved, That no person shall be deprived by law of the right to indulge in public recreation or pleasure on any day of the week; *provided*, that any person availing himself of that right shall not thereby violate public decency in the respect due to public worship.

Referred to Committee on State Affairs.

Mr. Martin, of Navarro, submitted the proceedings of a public meeting of the citizens of Dresden, Navarro county, on the subject of taxing dogs and taking wolf scalps.

Referred to Committee on Revenue and Taxation.

Mr. Mills submitted the following article on the subject of Superintendent of Education:

“Section —. There shall be a Superintendent of Public Instruction, who shall be elected by the people. The Superintendent shall hold his office for the term of two years. He shall receive an annual salary of three thousand dollars.

“Sec. —. The Superintendent shall have supervision and control of the public free schools of the State. The Legislature shall lay off the State into convenient school districts, and shall provide for the formation of a Board of School Directors in each county, and for the purpose of taxation each county shall be a school district. It shall be the duty of the Superintendent of Public Instruction to recommend to the Legislature such provisions of law as may be found necessary, in the progress of time, to the establishment and perfection of a complete system of education adapted to the circumstances and wants of the people of the State. He shall, at each session of the Legislature, furnish that body with a complete report of all free schools in the State.

“Sec. —. The Legislature shall establish a uniform system of public free schools throughout the State.

“Sec. —. As a basis for the establishment and endowment of said public free school, all the funds, lands and other property heretofore set apart and appropriated, or that may hereafter be set apart and appropriated, for the support and maintenance of public schools, shall constitute the public school fund; and all sums of money that may come to this State hereafter from the sale of any portion of the public domain of Texas shall also constitute a part of the public school fund; and the Legislature shall appropriate all the proceeds resulting from sales of public lands of this State to such public school fund. And the Legislature shall set apart, for the benefit of public schools, not less than one-sixth of the annual revenue derivable from general taxation, and shall also cause to be levied and collected an annual poll tax of one dollar on all male persons in this State between the ages of twenty-one and sixty years, also a tax of one and one-half per cent. on the gross earnings of all railroads, steamship lines and insurance companies of this State, also all the fines collected for carrying concealed weapons and disturbances of the peace, also all money collected for license for selling malt and spirituous liquors, for the benefit of public schools. And said fund and the income derived therefrom, and the taxes and other moneys herein provided for school purposes, shall be a perpetual fund, to be applied as needed, exclusively for the education of all the scholastic inhabitants of this State, and no law shall be made appropriating such fund for any other use or purpose whatever.

“Sec. —. The public lands heretofore given to counties shall be under the control of the board of school directors of their respective counties, and may be leased or sold by them under such rules and regulations as the Legislature shall prescribe.

“Sec. —. The Legislature shall, at its first session, and from time to time thereafter, as may be necessary, provide all needful rules and regulations for the purpose of carrying into effect the provisions of this article. It is made the imperative duty of the Legislature to see to it that all the children in the State between the ages of (8) eight to (15) fifteen are, without delay, provided with ample means of education. The Legislature shall annually appropriate for school purposes, and to be equally distributed among all the scholastic inhabitants of the State, the interest accruing on the school fund and the income derived from taxation for school purposes, and shall, from time to time, as may be necessary, invest the principal of the school fund in the bonds of

the State of Texas or of the United States; and all school moneys invested in the bonds of the State of Texas are hereby declared not to be of doubtful validity.”

Referred to the Select Committee of Seven on Article —, Education.

Mr. Nugent submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 12, 1875.

To the Hon. E. B. Pickett, President of the Convention:

The undersigned, constituting a majority of the special committee, appointed to inquire into the expediency of incorporating a provision in the constitution, setting apart public lands to certain sections of the State for the purpose of aiding in the construction of railroads, beg leave to submit the following report:

The policy of subsidizing railroads, notwithstanding it may seem to be sanctioned by the legislation of the State for nearly a quarter of a century, is not, in our view, well founded in principle, and we fail to perceive that it has resulted in anything more than a mere speculative advantage to those corporations which have been made its beneficiaries. It seems clear to us from the experience of the past and the admonitions of the present, that the further construction of railroads in this State can not be predicated upon grants of this kind, which, so far as human foresight can determine, will not, for many years, sustain any appreciable value in the markets of the world. These lands, situated as they are on the distant frontier, remote from settlements, can never be made available as a fund for any practical purpose until they have been reclaimed from the savage by the hardy pioneers who stand ready to enter upon them whenever this Convention shall have placed it beyond the power of corporations to anticipate them in the occupancy of their rightful heritage. No policy is so hallowed in the traditions of Texas as that which has constantly guaranteed to actual settlers the right of selecting homes out of our unappropriated domain; no policy has proven so efficacious as this in peopling our vacant land with emigrants from other shores; and, in our humble opinion, no policy has contributed so largely as this to the productive wealth of the State, or commended itself so strongly to the beneficent spirit of the age. This policy should be fostered and liberalized; and we do not think its wise design can be effectuated if powerful corporations are permitted to preoccupy the ground upon which the immigrant would establish his home. To make land grants to railroads means that our pre-

emption laws are to become nugatory; it means that the poor man shall continue to remain a homeless wanderer upon our soil, for the reason that his efforts to secure his western home are paralyzed when he contemplates the hopelessness of competition with these corporations, whose surveying parties are always enabled to keep a hundred miles ahead of him. It seems to us, then, a mere delusion when it is proposed to still subsidize railroads, and at the same time tender pre-emption privileges to actual settlers. In its last analysis, the proposition means that the public domain is to be the legitimate and exclusive prey of railroad corporations. Again, we do not perceive the force of the suggestion that the good faith of the State is pledged to the policy indicated in the resolution referred to us for consideration. The policy itself, we submit, was wrong in its inception, and we can not understand why it should be continued. Private corporations, while they frequently contribute to the public good, are always formed for the enrichment of individuals; and we submit that the first principles of our government are at war with every policy which seeks to lavish the bounty of the State upon a few private citizens, as a mere bonus for their ultimate aggrandizement. Besides, if no principle were involved, the impolicy of endowing private corporations with wealth, beyond what may be acquired by the proper investment of their capital in legitimate pursuits, must, we submit, be apparent to every one. Already they have become an ordinary appendage of government; they have dictated the laws of the country for years past; they have organized conspiracies in the capitals of the States, and through them have so shaped the course of legislation that they enjoy a virtual immunity from civil restraint and burdens. And we can not see that a policy which has in no small degree contributed to these evils, and which is full of forebodings for the future of our country, should be persisted in for any reason of sentimental or imaginary justice. The land grants of the State have heretofore been made without regard to sectional boundaries; and in the single instance in which it was undertaken to loan the school fund, the general law on the subject distributed the bounty of the State with as much fairness as the condition of the country then permitted; and surely no section has any reason to complain if it failed to reap the benefits of a law of which all could avail themselves alike. We think if good faith requires the adoption of the policy embodied in the resolution under consideration, it would equally demand a donation, or loan, of money to the sections named; for, unquestionably, these have never obtained loans of money equal to

those made to other portions of the State. For these, among other reasons, we believe that no such policy as that indicated in the resolution referred to should be perpetuated in the organic law of the State. On the contrary, we think that the Legislature should be prohibited from making such grants in the future. In no other way, it seems to us, can anticipated evils be obviated; in no other way can the State government be placed in an attitude in which it can curb those corporations, which are rapidly growing beyond legislative restraints. We therefore recommend that section 51 of the Legislative Department of the constitution be so amended as to prohibit land grants in the future.

All of which is respectfully submitted.

T. L. NUGENT,
WM. BLASSINGAME,
JOHN JOHNSON,
B. D. MARTIN.

Two hundred copies ordered printed

COMMITTEE ROOM,
AUSTIN, October 12, 1875

To the Hon. E. B. Pickett, President of the Convention.

The members of your Select Committee, appointed to inquire into the expediency of setting apart a portion of the public domain of the State, to be donated to aid in the construction of railways in the sections of the State that heretofore have not had the benefits resulting from such donations, and thereby to equalize every part of the State in the benefits resulting from such donations, have had the same under consideration, and being unable to agree in regard to the same, the undersigned, members of said committee, believing it proper that such appropriation of a portion of the public domain should be made, return herewith an article which they recommend may be incorporated into the constitution

JOHN W. STAYTON,
CHARLES DEMORSE,
W. W. WHITEHEAD.

“ARTICLE —

“Section 1. The Legislature shall have no power to make any donation of any of the public lands of this State to any work of internal improvement in this State except as is hereinafter provided.

“Sec. 2. It having been the policy of the State to encourage the construction of railroads by donations of land, and that policy having resulted in the construction of such works in certain

portions of the State, while certain other portions, more remote, have to a great extent received no advantage as yet from said policy; therefore, in order to equalize the benefits of the State's bounty to all portions of its territory, it is hereby provided: That the Legislature shall hereafter encourage the construction of railways, by donations of land, in alternate sections, as follows:

"First. In the territory embraced in the following boundaries, to-wit:

"Beginning at the mouth of the Colorado river; thence up said river to the point where it intersects the 99th degree of longitude west from Greenwich; thence north, on the line of said degree of longitude to its intersection with the 32d degree of latitude north; thence with said degree of latitude west to the Rio Grande; thence down said Rio Grande to the Gulf of Mexico; thence with the margin of said Gulf to the place of beginning; to which territory there is hereby allotted twenty thousand sections of land, the same to be received by railways hereafter constructed in said territory, surveys being made by the owners of such railways alternately of an equal number of sections for the State.

"Second. In the territory embraced in the following boundaries, to-wit:

"Beginning at the point of the intersection of the 32d degree of north latitude with the 99th degree of west longitude; thence on the line of said degree of longitude north to the north-eastern corner of what is called the Pan Handle; thence west to the northwestern corner of said Pan Handle; thence south with the line of the 103d degree of west longitude (to its intersection with the 32d degree of north latitude); thence east with said degree of latitude to the place of beginning; to which territory there is hereby allotted ten thousand sections, to be received and surveyed as hereinbefore provided for the first division of territory.

"Third. In the territory embraced in the following boundaries, to-wit:

"Beginning at the point where the Galveston, Houston and Henderson railway strikes Galveston bay; thence with said railway to its intersection with the International and Great Northern railway; thence in a north-easterly direction along said railway to the point where the same intersects the Texas and Pacific railway; thence east to the eastern boundary of the State; thence with the eastern boundary of the State to the Gulf of Mexico; thence along the margin of the gulf to the entrance into Galveston bay; and thence to the place of beginning; to which territory there is hereby allotted three thousand three hundred sections,

to be received and surveyed as hereinbefore provided for the first division of territory.

“Sec. 3. The alternate sections of land, provision for the survey of which is made in the preceding sections, and not to be donated to railways, are hereby set apart, donated, and declared to be a part of the public school fund of the State, and they shall never be otherwise used or appropriated; and the land authorized to be donated to railways shall never be appropriated to any other use by the State, except that the same may be sold to actual settlers, or located by land certificates which by failure to locate were rendered invalid by section 4 of article 10 of former constitution, which by this constitution may be validated if said lands are so sold or located before railways are constructed in the territory aforesaid, so as to entitle the owners of railways to the same.”

Two hundred copies of the report and article ordered printed.

The Convention then proceeded to the consideration of unfinished business, viz: Section 9, Bill of Rights.

On motion of Mr. German, the vote taken yesterday striking out article 1, Bill of Rights, was reconsidered.

[Mr. Darnell in the chair.]

Mr. Stockdale moved to make “Bill of Rights” article 1, and “Boundaries” article 2.

Lost.

Mr. German moved to amend the Bill of Rights so as to make it read article 1; Boundaries article 2, Bill of Rights.

Carried.

Mr. Stayton proposed to amend article 1 by striking out all that precedes line 20.

Adopted.

Mr. Reagan offered the following amendment:

Strike out lines 22, 23 and 24, and to the word “thence” in line 25, and insert in lieu thereof the following: “Beginning in the Gulf of Mexico three marine leagues in front of the mouth of Sabine Pass, and running thence to the center of the mouth of Sabine Pass and up the middle of Sabine Pass bay and river to latitude 32 degrees north.”

Adopted.

Mr. DeMorse offered the following amendment:

Sec. 10. After “favor,” in line 92, insert “and shall have the right to make a declaration of his acts and the motives therefor, the truth and the weight of which may be considered by the jury in connection with other evidence.”

The hour having arrived for considering the special order, viz:

“Art. —, Legislative Department,” on motion of Mr. Mills the same was postponed until the pending business be disposed of.

Mr. Stockdale offered the following as a substitute for Mr. DeMorse’s amendment:

In civil causes, no party thereto, if he have an interest therein, shall testify unless called to testify by the opposite party; and in criminal cases no defendant shall testify.

On motion of Mr. Ballinger the amendment and substitute were laid on the table.

Mr. Moore offered the following amendment:

Sec. 11, line 103, strike out the words “the offenses committed,” and insert the words “the prosecution is pending.”

Adopted.

Mr. Stayton offered to amend by striking out all after the words “*habeas corpus*,” in line 102.

Lost.

Mr. Stockdale offered the following amendment:

In lines 101 and 102, section 11, strike out “other courts of record” and insert “or District Judge.”

Mr. German offered to substitute for the amendment, strike out “or other court of record,” and insert “or District Court.”

Accepted by Mr. Stockdale.

Mr. Moore proposed to amend section 11, line 101, by adding after the word “record,” in line 102, the words “having jurisdiction to try the offense.”

Accepted by Mr. Stockdale.

Mr. McCormick offered the following as a substitute for the section.

“Sec. 11. All prisoners shall be bailable by sufficient security, unless for capital offenses, when the proof is evident or the presumption great; but this provision shall not prevent bail after indictment found upon the examination of the evidence by a Judge of the Supreme, District, or other court of this State, upon the return of a writ of *habeas corpus*, issued returnable, as may be provided by law.”

Lost.

Mr. Moore’s amendment, as accepted, adopted.

Mr. Kilgore offered the following amendment:

In section 12 insert in line 105, after the word “remedy” the words “by such writ.”

Lost.

Mr. Norvell proposed to amend by striking out in line 106 the words “in all proper cases.”

Adopted.

On motion of Mr. Stockdale, section 12 was passed over for the present.

Mr. Murphy offered to amend section 14, line 112, by adding after the word "guilty" the words "in a court of competent jurisdiction."

Adopted.

Mr. Rentfro proposed to amend section 15 by adding at the close thereof: "But no law shall be passed requiring any other qualification for jurors than those required of electors in this State."

On motion of Mr. Russell, of Wood, the amendment was laid on the table by the following vote:

YEAS—Allison, Abernathy, Arnum, Brown, Blake, Ballinger, Blassingame, Barnett, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Cooley, Douglas, DeMorse, Dohoney, Darnell, Davis of Brazos, Ford, Fleming, Ferris, German, Gaither, Graves, Holt, Henry of Smith, Henry of Limestone, Holmes, Haynes, Johnson of Franklin, King, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, Morris, McKinney, McCormick, Murphv, Norvell, Nunn, Nugent, Reagan, Robertson of Bell, Russell of Wood, Spikes, Scott, Smith, Stockdale, Stayton, Wade, Whitehead, Wright, Weaver, West, Waelder—60

NAVS—Brady, Flanagan, Lockett, Mills, Mitchell, Paul, Reynolds, Rentfro, Russell of Harrison—9.

Mr. Allison offered the following as a substitute for section 16:

"Sec. 16. No bail of attainder, *ex post facto* law, or law impairing the obligation of contracts, or retrospective in its operations, or making any irrevocable grants of special privilege or immunities, can be passed by the Legislature."

Withdrawn.

Mr. West proposed to add to section 16 the following:

"Nor shall any law be passed depriving a party of any remedy for the enforcement of a contract which existed when the contract was made."

Mr. Mills proposed to amend the amendment by adding: "Except usurious ones."

On motion of Mr. Dillard, the amendments were laid on the table.

On motion of Mr. Martin, of Hunt, the Convention adjourned to 2½ o'clock P. M.

EVENING SESSION — 2½ o'clock.

Convention met pursuant to adjournment; roll called, quorum present.

Convention resumed the consideration of Bill of Rights

Mr. Reynolds offered the following as an additional section, to come in as section 17:

“No form of slavery shall ever exist in this State, and involuntary servitude of any character whatever is hereby forbidden, except as a punishment for crime, whereof the party shall have first been duly convicted.”

On motion of Mr. Nugent, laid on the table by the following vote:

YEAS — Abernathy, Arnum, Blessingame, Barnett, Bruce, Chambers, Cook of Gonzales, Cooke of San Saba, Douglas, Dillard, Davis of Brazos, Flournoy, Fleming, Graves, Holt, Henry of Limestone, Holmes, Haynes, Johnson of Franklin, King, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, McKinney of Denton, McCormick, Norvell, Nugent, Spikes, Sessions, Wade, Whitehead, Weaver — 35.

NAYS — Allison, Brown, Blake, Ballinger, Brady, Cardis, Dohoney, Darnell, Davis of Wharton, Ferris, Flanagan, German, Gaither, Johnson of Collin, Lockett, Martin of Hunt, Morris, Mitchell, Moore, Murphv. Pauli, Ramey, Reynolds, Rentfro, Robertson of Bell, Ross, Russell of Wood, Scott, Smith, Stockdale, Stayton, Wright — 32.

Mr. Scott proposed to amend section 17 by inserting after the word “Legislature” the words “or created under its authority.”

Adopted

Mr. McCormick proposed to amend lines 120 and 121 by striking out the words “except for the use of the State.”

Lost.

Mr. Stayton proposed to amend by striking out the words “or secured by a deposit of money,” in lines 121 and 122

Lost.

Mr. Flournoy proposed to amend by inserting after the word “State.” in line 121, as follows: “or for the use of some county or incorporated city or town within the State.”

Lost.

Mr. Flournov moved to reconsider the vote just taken.

Lost.

Mr. Waelder offered the following amendment.

Strike out the words “damaged, destroyed,” in line 118, section 117.

Mr. Mills proposed to amend by inserting after "destroyed" the words "except to prevent conflagration."

Mr. Waelder's amendment lost.

Mr. Reagan proposed to amend Mr. Mill's amendment by adding the words "or in suppressing insurrection or repelling invasion."

Accepted.

[Mr. Brown in the chair.]

Mr. Nugent offered the following as a substitute for the amendment:

Insert "for" after the word "destroyed," in line 118, also "or" between "damaged" and "destroyed," in same line.

Messrs. Mills and Reagan withdrew their amendments.

Mr. Stockdale offered the following amendment:

Strike out all the section down to and including the word "money," in line 122, and insert "Private property shall not be taken except for public use; nor shall it be so taken without just compensation being made to the owner; if taken for public use to be applied by any corporation, except the State or a county, the compensation shall first be made therefor."

Mr. Robertson, of Bell, moved to strike out "county" from the amendment.

Carried.

Mr. Dillard moved to lay Mr. Stockdale's amendment on the table.

Mr. Nugent's amendment adopted.

On motion of Mr. Nunn, Mr. Dunnam was granted unlimited leave of absence on account of sickness in his family.

Mr. Ferris proposed to amend section 17 by inserting, in line 121, after the word "State," "or for public county roads."

Mr. Dillard moved to lay the amendment on the table.

Lost by the following vote:

YEAS—Ballinger, Blassingame, Crawford, Cook of Gonzales, Douglas, Dillard, Davis of Wharton, Erhard, Fleming, Flanagan, Gaither, Graves, Henry of Limestone, Holmes, Haynes, Lacy, Lynch, McKinney of Denton, Moore, Murphy, Norvell, Nugent, Reynolds, Robertson of Bell, Russell of Wood, Spikes, Scott, Sessions, Stavton, Wade, Whitehead, Wright, West—33.

NAYS—Allison, Abernathy, Arnim, Brown, Blake, Barnett, Brady, Bruce, Chambers, Cooke of San Saba, DeMorse, Dohoney, Darnell, Ford, Flournov, Ferris, Holt, Henry of Smith, Johnson of Franklin, King, Kilgore, Killough, Lockett, McLean, Martin of Navarro, Martin of Hunt, McCabe, Morris, Mills,

Mitchell, McCormick, Nunn, Paul, Reagan, Ramey, Rentfro, Ross, Russell of Harrison, Smith, Stockdale, Waelder — 41

The question on the adoption of Mr. Ferris's amendment was then put and amendment lost.

Mr. Allison proposed to amend by adding to section 18 the words "except for non-payment of fines and penalties imposed by law."

Lost.

Mr. McLean proposed to amend as follows:

Section 19, line 127, after the word "property" strike out "or." and insert after the word "privileges," "or immunities."

Mr. Holt offered the following as a substitute for section 19:

"The sole object and only legitimate end of government is to protect the citizen in life, liberty and property, and when government assumes other functions it is usurpation and oppression."

The chair ruled the substitute out of order.

Mr. McLean's amendment adopted

Mr. Kilgore proposed to amend section 19 by striking out after the word "or," in line 127, the words "in any manner," and insert the word "be."

Lost.

Mr. Ballinger proposed to amend section 19 by striking out all after the word "disfranchised" and insert "except by due course of the law of the land."

Adopted.

On motion of Mr. Chambers, the Convention adjourned until 9 o'clock A. M. to-morrow.

THIRTY-FOURTH DAY

HALL OF REPRESENTATIVES, }
AUSTIN, TEXAS, October 14, 1875. }

Convention met pursuant to adjournment; roll call; quorum present; prayer by the Rev. Mr. Wright, of Austin.

Mr. McKinney, of Walker, presented the memorial of the citizens of Grimes county, relative to legislative apportionment.

Referred to Committee on Legislative Apportionment.

Mr. Gaither offered the following resolution:

Resolved, That whereas, it being the duty of this Convention to frame a constitution that will aid in quieting the land titles of the State, and, whereas, the statute of limitations discrim-