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THIRTY-EIGHTH DAY.

HALL OF REPRESENTATIVES,
AUSTIN, TEXAS, October 19, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by the Rev. T. B. Lee, Rector of St. David's Church at Austin.

Journal of yesterday read and adopted.

Mr. Ramey submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 19, 1875. }

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

SIR—Your Committee on "Engrossed and Enrolled Ordinances" would respectfully report that they have carefully examined and compared a provision "On County School Lands," and find the same correctly engrossed. Respectfully,

WM. NEAL RAMEY, Chairman.

On motion of Mr. German, 200 copies of "Bill of Rights," as engrossed, was ordered to be printed.

On motion of Mr. Ramey, 200 copies of the article on "County School Lands," just reported by him, be printed.

Mr. Wright offered the following resolution:

WHEREAS, The Congress of the Republic of Texas, by an act passed on the 9th day of January in the year 1841, entitled an "Act to quiet the land titles within the frontier leagues bordering on the United States of the North," fixed the status of the titles of said lands to a certain extent; and,

WHEREAS, It becomes the duty of this Convention, so far as it has the power, to aid the settlers who have obtained patents from the State of Texas for lands situated within said border league country from being disturbed by suits on Mexican and Spanish titles, and to protect and quiet said settlers in the titles and possession of said lands; therefore,

Resolved, That all titles granted previous to the 17th day of March, in the year 1836, for one league and labor of land situated within the twenty frontier leagues bordering on the then "United States of the North," be and the same are hereby declared void and of no validity; unless the grantees in said titles actually resided at the time of said grants on the lands to which titles were made;

And on the trial of the validity of any of said grants the grantees shall be compelled to prove, outside of the statements and recitations in said grants, said facts, and shall also be com-

pelled to prove a strict and literal compliance with all the conditions and requirements connected with said grants and that said grantees, at the time said grants were made, did take actual possession of said lands so granted in good faith, and have paid all dues and taxes as they have become due up to the time of the institution of said suits.

Mr. Wright, of Lamar, asked that it be referred to the Committee on Mexican and Spanish Land Titles and Claims.

Referred to Committee on Mexican Land Titles.

Mr. Ford offered the following resolution:

Resolved, That the Committee on General Provisions be instructed to inquire into the propriety of adopting the following as a section of the constitution:

“Section— The Legislature may, when the public interests require it, provide for the creation of the office of Commissioner of Insurance, Statistics and History; and that the salary of said officer shall not exceed two thousand dollars per annum.

Referred to Committee on General Provisions.

Mr. Moore submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 18, 1875. }

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

The undersigned members of the special committee of seven, to whom was referred the majority and two minority reports and pending amendments on the subject of public schools, beg leave to report that they have carefully investigated the subject; and, in view of the conflicting opinions of this body, have agreed on the following eight sections as the most practicable basis, under the circumstance, on which to organize the public free schools of this State.

They would further submit that they have also considered the subject of the asylums, and find no cause to change the majority report thereon, heretofore presented, but suggest that it be placed among the general provisions, as it does not appropriately pertain to the public free school system.

D. A. NUNN,
L. W. MOORE,
L. NORVELL,
W. P. BALLINGER,
MARION MARTIN,
L. S. ROSS.

"PUBLIC FREE SCHOOLS.

"Section 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

"Sec. 2. All funds, lands, and other property heretofore set apart and appropriated for the support of public schools, all the alternate sections of land reserved by the State out of grants heretofore made, or that may hereafter be made, to railroad or other corporations, of any nature whatsoever, one-half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

"Sec. 3. And there shall be set apart annually not more than one-fourth the general revenues of the State, and a poll tax of two dollars on all male inhabitants in this State between the ages of twenty-one and sixty years, for the benefit of the public free schools.

"Sec. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times, and on such terms, as may be prescribed by law; and the Legislature shall not have power to grant any relief to the purchasers thereof. The Comptroller shall invest the proceeds of such sale, and of those heretofore made, as may be directed by the Board of Education, herein provided for, in the bonds of this State, if the same can be obtained, otherwise in United States bonds; and the United States bonds now belonging to said fund shall likewise be invested in State bonds, if the same can be obtained on terms advantageous to the school fund.

"Sec. 5. The principal of all bonds or other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, which shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school. And the available school fund herein provided shall be distributed to the several counties according to their scholastic population, and applied in manner as may be provided by law.

"Sec. 6. All lands heretofore or hereafter granted to the sever-

ral counties of this State for education or schools, are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell and dispose of its lands in whole or in part, in manner to be provided by the police court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof when sold, shall be held by said counties alone as a trust for the benefit of public schools therein. Said proceeds to be invested in bonds of the State of Texas, or of the United States, and only the interest thereon to be used and expended annually.

“Sec. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

“Sec. 8. The Governor, Comptroller and Secretary of State shall constitute a Board of Education, who shall distribute said fund to the several counties, and perform such other duties concerning public schools as may be provided by law.

“ASYLUMS.

“All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, are hereby set apart to them respectively, as indicated in the several grants, to provide a permanent fund for the support and maintenance and improvement of said asylums.

“And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for sale and investment of school lands in section 4 of article —, on public schools.”

On motion of Mr. Nunn two hundred copies of the report and ordinance were ordered printed, and they were made special order for Saturday next 10 o'clock A. M.

COMMITTEE ROOM,
AUSTIN, October 18, 1875. }

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

The undersigned, one of the special committee to which was referred the article reported by the majority of the standing Committee on Education, begs leave to dissent from the majority report of said special committee for the following reasons:

That while he favors a general diffusion of knowledge, and

believes that it is the duty of individuals as well as governments to encourage and promote this object by all legitimate means in their power, he does not believe that a general system of free public schools can be adopted by Texas at the present time that will afford that efficiency to the desired end as will be satisfactory to the friends of free public education, without the levying of a tax upon all the values of the State of from one-third to one-half of one per cent.

That the report of the Superintendent of Public Instruction shows that the scholastic population, between the ages of six and eighteen, for the year 1874, was 313,061, and for 1875 it is 339,000, an increase of 26,000 in twelve months.

That there was distributed to the scholastic population of 1874, \$499,959 05, and that for 1875, \$498,330 00, or thereabouts.

That after levying a tax of one-fourth of the annual revenue, we find only one dollar and forty-seven and two-third cents *per capita*, to pay the tuition of the scholar for four months, leaving an additional tax (assuming that the tuition will only amount to six dollars for four months) of about four hundred per cent. to be collected from the taxable values of the county.

That with the rapid immigration to the State, we may safely calculate that the increase of scholastic population will amount to from twenty-five to thirty thousand annually, giving an annual increase in taxation for free public schools of from one hundred and eighty to two hundred thousand dollars.

That a large proportion of the immigration to the country that will aid in increasing the scholastic population of the State will add but little, if anything, for many years to the taxable values of the State

That any system of public free schools will necessarily increase, even in old settled States and countries, beyond the increase in taxable values.

That in the city of Boston the tax for public free schools has increased from \$389,829 in 1854-55 to \$2,081,043 in 1874-75, an annual increase of \$104,052, or nearly thirty per cent.

That while this increase of expense in Boston will probably fall far short of the increase of scholastic population in Texas, it the last four years, which may be assumed as a fair average, as follows:

Taxable property for 1872....	\$211,000,000
Taxable property for 1873....	223,000,000
Taxable property for 1874.	241,000,000
Probable amount for 1875....	250,000,000

That it is evident, if I am correct in the above estimate, that no system of free public schools can be maintained without a practical confiscation of the property of the country, and the striking down of all her industries.

That the industrious farmer and mechanic can never rise, or accumulate property, if you levy an annual tribute on him for the education of the children of his less industrious neighbor.

That he does not believe that it ever was the intention of the founders of our republican form of government to take the entire control of the education of the children of the country out of hands of the parents or legal guardians.

That the history of the country, from the first landing of the Pilgrims down to the present time, will not warrant the conclusion that any species of compulsory education was intended or would be tolerated.

That the appointment of high officials or a commission by the government to select text books that shall be used for the study and training of the youth of the country, is at war with the laws of God, and is subversive of the principles of free speech, liberty of conscience and freedom of thought, as enunciated in 1776, by the authors of American liberty, and re-enunciated time and again since that time.

That as the forms and formulas prescribed in religion enslave thought and fetters conscience, so the minds of the youth of the country will be trained to look to government for all their wants and necessities, and finally to regard it as parent, and then as master, would prevent the development of that independent, self-reliant and chivalrous feeling that constitutes one of the best supports of our republican form of government.

That taxation for purposes other than the legitimate expenses of the government is in violation of right, where life, liberty and the pursuit of happiness is guaranteed, because it assumes to educate the child in a prescribed manner, contrary to the wish and desire of the parent—taxes him for a purpose that is contrary to right and revolting to his conscience, and compels him to support an institution never contemplated by the founders of a republic, because in no way necessary to its perpetuity.

That it was not—could not have been the intention of the men of 1836 or 1845 to declare that a system of free public schools should be maintained by a direct tax on the property and industries of the people throughout all time, with the standing invitation for immigration from all parts of the world.

They certainly did not intend to open the way for an uncertain annual increase of taxation upon the labor of the country,

amounting to a probable increase of from twenty to thirty per cent.

I can not believe that they intended to fasten on themselves and their descendants a form of government that would guarantee an education to the children of all countries (as well as their own) that might think proper to avail themselves of it, without money and without price.

I can not believe that Texas did then, or is bound now, to conscript the industries of the country to support and maintain an institution, not only not essential to the maintenance of a free government, but absolutely subversive of both civil and religious liberty.

That it was not the intention, as it was not the policy of the framers of the constitutions of 1836 or 1845 to do more than to encourage education, and to aid the schools of the country that might be established by individual enterprise and money, by the donation of lands and a portion of the money received for the sale of our north-western territory, an amount sufficient to educate all the indigent orphans of the country.

The undersigned would, therefore, offer the following article as a substitute for the one offered by the majority of the committee.

All of which is respectfully submitted.

E. S. C. ROBERTSON.

“ARTICLE —.

“Section 1. To promote the general diffusion of knowledge the lands heretofore set apart by the Republic or State of Texas, and the moneys, bonds and other property now owned by the State, which have been devoted to the use of public free schools, shall constitute the basis of a permanent fund, to be called the General Educational Fund;

“*Provided*, That the title to lands given to the State for the use and benefit of *public free schools* shall be surrendered to the donors at their option; but the right of the State to improvements put upon said lands by the State shall not be hereby affected.

“Sec. 2. The Legislature shall provide for the sale of all lands set apart in section 1 of this article as soon as practicable, which have been located, or which may hereafter be located, by railroad or other corporations, and for the sale of all other property therein set apart; and all moneys derived from the same shall be invested in bonds of the State of Texas.

“Sec. 3. The interest accruing on the General Educational Fund shall be distributed annually by the Comptroller of Public Ac-

counts between the respective counties of the State, according to their scholastic population, as follows:

"1. To the payment of tuition for four months in each year of all the indigent orphan children of the State between the ages of eight and sixteen years; the remainder to be applied *pro rata* to the payment of tuition of all children of the State within said ages; and the Legislature may set aside not more than one-twentieth of the annual revenues of the State in aid of said General Educational Fund."

On motion of Mr. Stockdale, 200 copies of this report and article were ordered printed, and made special order for Saturday at 10 o'clock A. M.

Mr. Darnell reported as follows:

COMMITTEE ROOM,
AUSTIN, October 19, 1875. }

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

The Committee on Public Lands and Land Office, to whom was referred the annexed resolution concerning Spanish land titles, beg leave to report that they have examined the same, and recommend that it be referred to the select committee on Mexican and Spanish Land Titles. Respectfully submitted,
N. H. DARNELL, Chairman.

Report adopted, and resolution referred as indicated.

Mr. Haynes offered the following resolution:

Resolved, That Joseph Junker, the porter in charge of the State Library, in addition to his present duties, be required to do the engrossing and enrolling of the Convention, and that his pay be increased to five dollars per day, to commence from this date.

Adopted.

Mr. Cook, of Gonzales, offered the following resolution:

Resolved, That the Committee on General Provisions be, and they are hereby, instructed to inquire into the expediency of requiring the Legislature to meet next after the adoption of this constitution, to set apart and appropriate, out of the available school fund, for the current year, the sum of four hundred thousand dollars, or so much thereof as may be necessary to pay the teachers of public schools for services rendered prior to first day July, A. D. 1873, and report by ordinance or otherwise.

Referred to Committee on General Provisions.

BUSINESS ON THE TABLE.

Majority and minority reports on immigration taken up.

Mr. Russell, of Wood, offered the following resolution, to accompany the majority report:

Resolved, That the following provision be placed in the constitution, under the head of "General Provisions":

"Sec. —. The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigration or for any purpose of bringing immigrants to this State."

[Mr. Darnell in the chair.]

Mr. Reagan offered the following amendment to section 1 of the article reported by the minority of the committee signed by Messrs. Waelder and Pauli:

Amend by striking out the proviso in lines 68, 69 and 70, and insert, "*provided*, that the moneys expended by this bureau shall be for the collection and dissemination of information on these subjects, and that no money shall be paid out for bringing immigrants to the State."

Accepted.

Mr. Whitfield proposed to amend the article of the minority report, as amended by Mr. Reagan, as follows:

Section 1, line 68, strike out all after the word "*provided*," and insert: "that the Legislature shall never make any appropriation to defray the expenses of immigrants to this State; *and provided further*, that said bureau shall not cost exceeding five thousand dollars per year."

On motion of Mr. Abernathy, the main question was ordered.

The question on the adoption of Mr. Whitfield's amendment was put and the amendment lost by the following vote:

YEAS—Allison, Blake, Crawford, Cook of Gonzales, DeMorse, Dohoney, Davis of Brazos, Ford, Henry of Smith, Henry of Limestone, Haynes, McCormick, Murphy, Nugent, Ross, Smith, Wade, Whitfield—18.

NAYS—Abernathy, Arnim, Abner, Ballinger, Blassingame, Barnett, Burleson, Brady, Bruce, Chambers, Cline, Cardis, Douglas, Dillard, Davis of Wharton, Erhard, Flournoy, Fleming, Ferris, Flanagan, German, Gaither, Graves, Holt, Johnson of Franklin, Johnson of Collin, King, Killough, Kilgore, Lockett, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, McCabe, Morris, Mills, Mitchell, McKinney of Walker, Norvell, Nunn, Pauli, Reagan, Ramey, Reynolds, Rentfro, Robertson of Bell, Robeson of Fayette, Russell of Harrison, Russell of Wood, Spikes, Scott, Sessions, Stockdale, Stayton, Sansom, Whitehead, Wright, Weaver, West, Waelder—62.

The question was then put on the adoption of the article reported by Messrs. Waelder and Pauli, as amended by Mr. Reagan.

The yeas and nays being called, the article was lost by the following vote:

YEAS—Blake, Ballinger, Burleson, Crawford, Cline, DeMorse, Erhard, Flanagan, Henry of Smith, Henry of Limestone, King, Kilgore, Lockett, Lynch, Martin of Navarro, McCabe, Morris, Mills, Mitchell, McKinney of Walker, McCormick, Murphy, Pauli, Reagan, Reynolds, Russell of Harrison, Sessions, Smith, Stockdale, Stayton, Whitfield, West, Waelder—33.

NAYS—Allison, Abernathy, Arnim, Abner, Brown, Blassingame, Barnett, Bruce, Chambers, Cook of Gonzales, Cooke of San Saba, Douglas, Dillard, Dohoney, Darnell, Davis of Brazos, Flournoy, Fleming, Ferris, German, Gaither, Graves, Holt, Haynes, Johnson of Franklin, Johnson of Collin, Killough, Lacy, McLean, Martin of Hunt, McKinney of Denton, Norvell, Nunn, Nugent, Ramey, Rentfro, Robertson of Bell, Robeson of Fayette, Ross, Russell of Wood, Spikes, Scott, Sansom, Wade, Whitehead, Wright, Weaver—47.

[President in the chair.]

The chair decided that the main question was not exhausted until a vote upon the engrossment of Mr. Russell's (of Wood) resolution offered this morning.

Mr. Stockdale made this point of order, viz.: that under the rules Mr. Russell's (of Wood) resolution should be referred to a committee, printed, and laid upon the desks of delegates before it could be engrossed.

The Chair ruled against this point, and ordered the vote upon the engrossment, which resulted in engrossing the resolution by the following vote:

YEAS—Allison, Abernathy, Arnim, Abner, Blassingame, Barnett, Bruce, Crawford, Chambers, Cooke of San Saba, Douglas, Dillard, Dohoney, Darnell, Davis of Brazos, Flournoy, Ferris, German, Gaither, Graves, Holt, Haynes, Johnson of Franklin, Johnson of Collin, Kilgore, Killough, Lacy, McLean, Martin of Hunt, McKinney of Denton, Norvell, Nugent, Ramey, Robertson of Bell, Robeson of Fayette, Russell of Wood, Spikes, Scott, Stockdale, Sansom, Wade, Whitehead, Wright, Weaver—44.

NAYS—Brown, Blake, Ballinger, Burleson, Brady, Cook of Gonzales, Cline, DeMorse, Davis of Wharton, Erhard, Ford, Fleming, Flanagan, Henry of Smith, Henry of Limestone, King, Lockett, Lynch, Martin of Navarro, McCabe, Morris, Mills, Mitchell, McKinney of Walker, McCormick, Murphy, Nunn, Pauli, Reagan, Reynolds, Rentfro, Ross, Russell of Harrison, Sessions, Smith, Stayton, Whitfield, West, Waelder—39.

Mr. McLean moved to reconsider the vote and to lay the motion on the table.

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

THIRTY-NINTH DAY.

HALL OF REPRESENTATIVES, }
AUSTIN, TEXAS, October 20, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by the Rev. T. B. Lee, of St. David's Church. Journal of yesterday read and adopted.

On motion of Mr. McKinney, of Walker, Mr. Ross was excused until Monday next.

On motion of Mr. Robeson, of Fayette, Mr. Moore was excused until Saturday next.

Mr. Russell, of Wood, submitted the following report of a majority of Committee on Revenue and Taxation:

COMMITTEE ROOM, }
AUSTIN, October 18, 1875. }

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

The undersigned, constituting a portion of the Committee on Revenue and Taxation, regret that they can not concur in that portion of the report of said committee which provides that taxes on real and personal property due by non-residents may be paid at the Comptroller's Office in Austin or in the county where the non-resident tax-payer resides, instead of being paid to the collector of taxes in the county where the property is situated.

We believe that enormous wrongs have heretofore been perpetrated by non-resident tax-payers in not rendering their lands for taxation at all, and in inadequate valuation on property, both real and personal, and in the privilege heretofore granted that class of persons in allowing taxes to be paid elsewhere than in the county where the same are due, and that all other subjects of retrenchment and reform sink into comparative insignificance when compared to this.

We believe that the past history of the country shows that large land owners, many of whom reside beyond the limits of the State, under pre-existing laws, have been enabled to escape taxation in whole or in part, and the actual settlers owning far less property have been required to pay largely over a just pro-