

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Journal of the Constitutional Convention of the State of Texas: Begun and Held at the City of Austin Texas. Constitutional Convention (1875). Galveston : Printed for the Convention at the "News" Office, 1875.*

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.

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-

portion of the expenses of the State government, and that the only way to effect a permanent remedy for the evil is to require all taxes to be paid in the county where the property is situated.

We believe that taxation should be equal and uniform through the country, and that every citizen and property owner should bear his just proportion of the burthens of government; and that no man, or set of men should have exclusive privileges, and that law is best which affords the greatest good to the greatest number of persons. And while we would be willing that citizens of unorganized counties should be permitted to pay their taxes at the office of the Comptroller of Public Accounts at the capital of the State, we do, most earnestly, insist that all other persons should be required to pay taxes on property in the county where the property is situated, and that this can only be done by having the mode of collecting taxes made plain, direct and expeditious.

We are informed and believe that several million dollars are now due the State for back taxes, and notwithstanding frequent legislative enactments on the subject, some of which requiring landed property to be valued in the county where situated, more than 35,000,000 million acres of patented land in Texas, owned by non-residents, have heretofore escaped taxation entirely, whereby the country is annually being wronged out of a very large amount of money.

W. P. McLEAN,
J. RUSSELL,
ASA HOLT,
J. W. WHITFIELD,
J. R. FLEMING,
B. ABERNATHY,
G. B. COOKE,
JOHNSON, of Collin,
L. S. ROSS.

On motion of Mr. Allison one hundred copies of the report ordered printed.

On motion of Mr. Russell, of Harrison, Mr. Flanagan was excused indefinitely.

Mr. Holt offered the following resolution and ordinance:

Resolved, That the following ordinance be submitted to the people, to be voted on by them as a separate and distinct proposition, at the election upon the ratification of the constitution to be framed by his Convention; and if a majority of the votes cast at such election upon such ordinance shall be in favor thereof, the same shall be a part of the constitution of the State:

“ORDINANCE ON SUFFRAGE.

“No person who shall be twenty-two years of age or upwards, shall be permitted to vote at any election held in this State unless he shall have paid a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.”

On motion of Mr. Kilgore, the resolution and ordinance were referred to a select committee of five.

Mr. Dohoney offered the following resolution:

Resolved, That the Committee on Agriculture and Stock-raising be instructed to inquire into the expediency of reporting the following article, or something similar, as a provision in the constitution, to-wit:

“ARTICLE —.

“AGRICULTURE AND STATISTICS.

“Section 1. The Legislature shall provide for the establishment and support of a Bureau of Agriculture and Statistics, which bureau shall be charged with gathering and publishing correct statistical information as to the population, public lands, productions, agricultural, industrial and stock-growing, as well as the mineral and other resources of the different sections of the State.”

Referred to Committee on Agriculture and Stock-raising.
To the Hon. E. B. Pickett, President of the Convention:

I am instructed by the majority of the Committee on Judiciary to report to the Convention the accompanying article as the result of their labors to present to the Convention an article on the “Judicial Department” in the constitution for the State to be framed by this Convention.

Diversity of opinion existed among the committee; and each member of the committee will feel himself at liberty to act upon his own views on the different sections of the article.

W. P. BALLINGER,
One of the Committee.

“ARTICLE —.

“JUDICIAL DEPARTMENT.

“Section 1. The judicial power of this State shall be vested in one Supreme Court, in District Courts, in County Courts, in Commissioners’ Courts, in Courts of Justices of the Peace, and in such other courts as may be established by law. The Legislature may establish criminal district courts, with such jurisdiction as it may prescribe, but no such court shall be established unless the district includes a city containing at least fifteen thousand

inhabitants, as ascertained by the census of the United States, or other official census. The Criminal District Court of Galveston and Harris counties shall continue with the district jurisdiction and organization now existing by law, until otherwise provided by law.

“Sec. 2. The Supreme Court shall consist of five justices, three of whom shall constitute a quorum, and the concurrence of three judges shall be necessary to a decision by said court. The State shall be divided into five districts, as nearly equal in population as practicable, and the qualified voters of each district shall elect one of said justices at an election for members of the Legislature. Each of said justices at the time of his election shall be a citizen of the United States, at least thirty years of age, and have been a practicing lawyer, or judge of a court of record, either or together, in this State seven years, and have resided two years next preceding his election in the district by which he may be elected. They shall hold their office for eight years, and shall each receive an annual salary of four thousand dollars, which amount shall not be increased or diminished during their term of office. They shall elect from among their number, from time to time as they may deem proper, a presiding judge, with reference to the dispatch of business in said court.

“Sec. 3. The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State. In criminal cases below the grade of felony, no appeal shall be allowed from the County Court, unless within such time and under such regulations as may be prescribed by law, upon inspection of a transcript of the record from the County Court, the district judge of said county, or a judge of the Supreme Court first applied to, and whose duty it shall be to indorse his action thereon, shall certify his belief that error therein has been committed by said County Court. Appeals may be allowed from interlocutory judgments in such cases and under such regulations as may be provided by law. The Supreme Court and the judges thereof shall have power to issue the writ of *habeas corpus*, and under such regulations as may be prescribed by law they may issue the writ of mandamus and all other writs necessary to enforce the jurisdiction of said court. The Supreme Court shall have power upon affidavits, or otherwise, as by the court may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The Supreme Court shall sit for the transaction of business from the first Monday of October until the last Saturday of June of every year, at

the seat of government, and at not more than two other places in the State.

“Sec. 4. The Supreme Court shall appoint a clerk for each place at which it may sit, and each of said clerks shall give bond in such manner as is now, or may hereafter, be required by law; shall hold his office for four years, and shall be subject to removal by the said court for good cause, entered of record on the minutes of said court.

“Sec. 5. On certificate from the Supreme Court that said court is unable to dispose of the business pending therein, together with the current business of said court, the Legislature shall provide for the organization of a commission for the determination of all cases pending in said Supreme Court, and which may be turned over to said commission by the Supreme Court.

“Sec. 6. The State shall be divided into . . . judicial districts, which may be increased or diminished by the Legislature. For each district there shall be elected by the qualified voters thereof, at a general election for members of the Legislature, a judge, who shall be at least twenty-five years of age, shall be a citizen of the United States, shall have been a practicing attorney in the courts of this State for the period of four years, shall reside in his district during his term of office, shall hold his office for the term of six years, shall receive an annual salary of three thousand dollars, which shall not be increased or diminished during his term of service, and shall hold the regular terms of court at one place in each county in the district twice in each year, in such manner as may be prescribed by law.

“The Legislature shall have power, by general act, to authorize the holding of special terms, when necessary for the dispatch of business, and shall provide for the holding of district courts, when the judge thereof is absent, or is, from any cause, disabled or disqualified from presiding.

“Sec. 7. The District Court shall have original jurisdiction of all criminal cases; of all suits in behalf of the State to recover penalties, forfeitures, and escheats; of all cases of divorce; of all suits to recover damages for slander or defamation of character; of all suits for the trial of title to land; of all suits for the enforcement of liens; of all suits for the trial of the right to property, levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value one hundred dollars; and of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at, or amounted to, one hundred dollars, exclusive of

interest; and the said courts and the judges thereof shall have power to issue writs of injunction, certiorari, and all other writs necessary to enforce their own jurisdiction, and to give them a general superintendence and control over inferior tribunals. The District Courts shall have original and appellate jurisdiction and general control in probate matters over the County Court established in each county; for appointing guardians, granting letters testamentary and of administration; for settling the accounts of executors, administrators, and guardians, and for the transaction of business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by the Legislature."

"Sec. 8. There shall be a clerk of the District Court for each county, who shall be elected by the qualified voters for State and county officers, and who shall hold his office for four years, subject to removal by information or by indictment of a grand jury, and conviction by a petit jury; in case of vacancy, the judge of the District Court shall have the power to appoint a clerk who shall hold until the next general election.

"Sec. 9. In the trial of all causes in the District Courts the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury, but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury; for such sum and with such exceptions as may be prescribed by the Legislature.

"Sec. 10. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degree as may be prescribed by law, or where he shall have been of counsel in the case. When the Supreme Court, or any three of its members shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said case or cases. When a judge of the District Court is disqualified, by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or, upon their failing to do so, a competent person shall be appointed to try the cause in the county where it is pending, in such manner as may be prescribed by law; and the District Judges may exchange districts, or hold courts for each other, when they may deem it expedient, and shall do so when directed by law. The disquali-

fication of judges of inferior tribunals shall be remedied and vacancies in their offices shall be filled as prescribed by law.

“Sec. 11. All judges of the Supreme and District Courts shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be, ‘The State of Texas;’ all prosecutions shall be carried on in the name and by the authority of ‘The State of Texas,’ and conclude ‘against the peace and dignity of the State.’”

“Sec. 12. Grand and petit juries in the District Courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony, in the District Courts, nine members of the jury, concurring, may render a verdict; but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors may die or be disabled from sitting, the remainder of the jury shall have power to render a verdict; *provided*, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

“Sec. 13. There shall be established in each county in the State an inferior tribunal styled the County Court, which shall be a court of record; and there shall be elected by the qualified voters in each county a judge of the said County Court, who shall be well informed in the law of the State and a conservator of the peace, and shall hold his office for four years, and until his successor is qualified. He shall receive such compensation as may be prescribed by law, and shall be removed from office for neglect of duty, incompetency, malfeasance, or official misconduct, and the Legislature shall enact laws to regulate such removal.

“Sec. 14. The County Court shall have jurisdiction, with such exceptions as may be provided by law, of all misdemeanors and of civil cases when the matter in controversy shall exceed one hundred dollars and not exceed five hundred dollars, exclusive of interest, without regard to any distinction between law and equity; but shall not have jurisdiction of suits for the recovery of lands, nor to enforce liens on real estate. Said County Court shall have the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business

appertaining to the estates of deceased persons, minors, idiots, lunatics, persons *non compos mentis*, and common drunkards, including the settlement, partition and distribution of such estates, and apprentice minors, as prescribed by law. It shall have jurisdiction of appeals from justices of the peace to such extent and in such manner as may be prescribed by law, but there shall be no further appeal to the District or Supreme Court in such cases. The Judge of said County Court shall have power to issue writs of mandamus, injunction and all other writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of *habeas corpus* in cases where the offense charged is of a grade that said County Court or other inferior court is competent to try. The Legislature shall have power, by local law, for any county or counties having as many as ten thousand inhabitants, or by general law, to confer upon said County Courts further jurisdiction concurrent with the District Courts, of felonies, the punishment of which is not capital, and of civil cases where the matter in controversy shall not exceed in value one thousand dollars, and to regulate proceedings for the exercise of such jurisdiction, and for appeals therefrom. The County Court shall not have criminal jurisdiction in any county in which there is a Criminal District Court, unless expressly conferred by law.

“Sec. 15. The County Courts shall always be open for the trial of criminal cases, and shall hold a term for civil business at least once in every two months, and for probate business as prescribed by law. Prosecutions may be commenced therein by information, and as otherwise provided by law. Grand juries, empaneled in the District Courts, shall inquire into all crimes, including misdemeanors, and indictments therefor shall be returned into the District Court, and all indictments now pending, or hereafter returned into the District Court, for offenses of turned into the District Court, and all indictments now pending in the District Court, jurisdiction of which is given to the County Court, and in which the plaintiff may prefer removal thereto, and all probate business shall be transferred to the County Court, in all counties in which a County Court may have been organized. The jury in the County Court shall consist of six persons, but no jury shall be empaneled for the trial of civil cases, unless demanded by one of the parties, who shall pay such jury fee in advance as may be prescribed by law, unless he makes affidavit that he is unable to pay the same. The jury may be waived by agreement in all misdemeanors.

“Sec. 16. There shall be elected by the qualified voters in

each county four County Commissioners, whose term of office shall be two years from the date of their election, and until their successors are duly qualified, who, together with the County Judge, shall constitute the Commissioner's Court of the county, with jurisdiction over county revenue, police, roads, and public affairs of the county, and the powers, duties and mode of proceeding thereof shall be such as have been heretofore prescribed for Commissioner's and Police Courts in this State, until otherwise provided or regulated by law.

"Sec. 17. The Commissioner's Court of the county shall fix a convenient number of justices of the peace for each county, and divide the county into justice's precincts, in each of which a justice of the peace shall be elected by the qualified voters of such precinct. They shall have such jurisdiction as may be provided by law in civil cases where the matter in controversy shall not exceed one hundred dollars, exclusive of interest, and in misdemeanors where the punishment does not exceed a fine of one hundred dollars.

"Sec. 18. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for two years, who shall be the clerk of the County and Commissioners' Courts, whose duties and perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the judge of the County Court, until the next general election for county or State officers; *provided*, that in counties having a population of less than eight thousand persons the Legislature may provide for the election of a single clerk, who shall perform the duties of District and County Clerks.

"Sec. 19. A County Attorney shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold office for the term of two years. In case of vacancy the Commissioners' Court of the county shall have power to appoint a County Attorney until the next general election. The County Attorneys shall represent the State in all cases in the District Court, and inferior courts, in their respective counties; but if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of District Attorneys in such districts as may be deemed necessary, and make provision for the compensation of District Attorneys and County Attorneys.

"Sec. 20. There shall be elected by the qualified voters of

each county, a Sheriff, and by the qualified voters of each justices' precinct, one Constable, who shall hold their offices for the term of two years, whose duties and perquisites and fees of office shall be prescribed by the Legislature, and vacancies in whose offices shall be filled by the judge of the County Court, until the next general election for county or State officers.

"Sec. 21. County Judges, County Attorneys, Clerks of the District and County Courts, Sheriffs, Justices of the Peace, Constables, and other county officers, may be removed by the judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.

"Sec. 22. The Supreme Court shall have power to make rules and regulations for the government of said court and the other courts of the State, to regulate proceedings, and expedite the dispatch of business therein.

"Sec. 23. The State shall have no right of appeal in criminal cases."

COMMITTEE ROOM,
AUSTIN, October 20, 1875. }

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

The undersigned, members of the Committee on Judiciary, not being able to agree to all the sections of the "Judiciary Article," as reported by a majority of the committee, and especially disagreeing with the majority in the arrangement of the jurisdiction of the courts provided for, submit to the Convention the annexed sections, which they recommend as substitutes for the corresponding sections in the article reported by the majority of the committee.

The objections to the present judicial system, more probably than those to any other part of the present constitution, induced the people of the State to vote for the call of a Constitutional Convention. They are very clearly defined in the minds of the people, who look to us to remedy the evils complained of, to reduce, by a wise and judicious reorganization of our judicial system, the burdensome expenses imposed on them by the present system, and to relieve the industries of our people of the exhausting drain on them caused by it.

The principal grounds of objection to the present judicial system are:

1. That the District and Supreme Court dockets are so overcrowded with petty cases as to greatly impair the usefulness of

those courts, and delay justice, and, in many cases, to amount to almost a denial of justice.

2. The extension of the jurisdiction of the District Courts to almost every subject of litigation, however small and unimportant, and the right of appeal given to the Supreme Court from almost all judgments of the District Courts, has not only greatly impaired the usefulness of these courts and injured the interests of litigants to an extent which it would be difficult to estimate, but it has made it necessary that we should have about forty District Judges, including the judges of criminal districts, at a great expense to the public, which, it is believed, would not be necessary under a proper judicial system; but even with all these judges, and with this great and unnecessary expense, the District Court dockets are so crowded, and the business of these courts is so delayed, that it is not certain in many cases whether an injured party had not better abandon his claim for justice than attempt to secure his rights through the courts.

3. The present system of giving the District Courts original jurisdiction in all civil cases for sums of one hundred dollars and more, and over all criminal offences, even of the least and most trivial kinds, causes very great numbers of the people of all classes and conditions, and from every part of their counties, to be called away from their ordinary vocations at every term of the court, and, on account of the crowded condition of the dockets, to have to remain away from their business in attendance on the courts, at a ruinous cost to themselves, and to such an extent in the aggregate as to produce an exhausting drain on the industries of our people.

4. The same causes very greatly, and, it is believed, unnecessarily, increase the amount of jury service to be performed, and the cost of that service to the people. And this, with the various court costs and fees of officers, which form a part of these evils, has already bankrupted many of our counties, and is bankrupting many others.

The people all over the State see, and feel, and know these things, and earnestly look to this Convention for relief from them.

While the plan submitted by the majority of the committee is doubtless designed to furnish a partial remedy for these evils, by the creation of a County Court with civil and criminal and probate jurisdiction, we respectfully submit that it will not do so to the extent to which the people have just right to expect relief. It gives the District Courts concurrent jurisdiction with the County Courts and Justices' Courts over all misdemeanors, and

will not, it is believed, operate to transfer the trial and determination of a very great number of these cases from the district to the inferior courts.

And, as to those misdemeanors which may be tried in the County Courts, the people, as parties, or witnesses, or jurors, will still have to be drawn from all parts of their counties to the county towns for their trial, and will thus be exposed to the same hardships, only some less in degree, than they are under the present system. And, in relation to cases of this kind, it is not to be forgotten that witnesses are never paid by the State, and very rarely by defendants; and yet, summoned possibly from the remote parts of a county to their county town, they must abandon their business, at whatever loss to them, and go and lose their time, and pay their bills, or camp out, as best they may; and all this because such cases are to be tried at the county towns, rather than in the precincts where the offenses may have been committed.

And, under the plan presented by the majority of the committee, jurisdiction is retained in the District Courts, in civil cases, over all sums of one hundred dollars or more. The District Courts having concurrent jurisdiction with the County Courts over all sums from one hundred to five hundred dollars, and all cases tried in the County Courts are liable, on appeal, to be re-tried *de novo* in the District Courts, and many of them will be so re-tried, and will thus, to this extent, perpetuate the existing evils of crowded District Court dockets.

And, under the plan of the majority a party, aggrieved by the decision of a County Court, in a civil case, before he can take his case to the District Court, must go to the expense of having a petition prepared for a *certiorari*, and then hunt up a judge and get his petition granted before his case can go up, it will be seen that the remedy is costly and inconvenient, and, we do not doubt, will be unsatisfactory.

And under the plan presented by the majority of the committee, appeals are allowed, in criminal cases, directly from the County Courts to the Supreme Court. The effect of this, if this right of appeal shall not be unduly embarrassed, will be to crowd the docket of the Supreme Court with petty cases, as it now is, and to render it impossible for that court to dispose of the business before it, and to involve litigants and the country in all the disasters arising from delays in its decisions, which we now experience. And besides this, in the plan presented by the majority of the committee, it is provided that no one can obtain such an appeal without first going to the expense of obtaining a

copy of the whole record of the case, and of then getting the certificate of a District or Supreme Court Judge that the appeal ought to be granted. This can not fail to prove vexatious and unsatisfactory to the people. We believe that when appeals are allowed in criminal cases they should be allowed as a matter of right, and should not be encumbered with such expense and hindrances as to substantially deny the right in many cases, while professing to allow it.

The plan of jurisdiction which we present gives exclusive original jurisdiction to justices of the peace in civil cases, where the matter in controversy is two hundred dollars or less, with such exceptions as are provided in the section in relation to the jurisdiction of the District Courts. And it gives them exclusive jurisdiction over offenses in which the fine or penalty is not more than two hundred dollars, with such exceptions as are provided in the section in relation to the jurisdiction of the District Courts, with the right of appeal and trial, *de novo*, in all cases, civil and criminal, to the County Court, in which the judgment of the Justice's Court is for more than ten dollars, exclusive of costs. This will localize the trial of all petty cases within the precinct where the cause of action may originate, and will enable the parties, their witnesses, and the jurymen who try the case, to go from their homes in the morning, attend to the case, and return home at night, without a great waste of time, or material interruption to their ordinary pursuits, and will thus operate to relieve, in a large degree, the present excessive drain on the industrial interests of the country, which results under the present system from taking a large part of these cases away from the precincts to the county towns for trial.

The extensive jurisdiction thus given to this class of magistrates, allowing five of them only to each county, and giving them notarial powers, will, it is believed, secure to them, in most of the counties, such emoluments as to make it practicable to secure the services of good men, properly qualified for these important duties.

It is urged as a reason for not increasing the jurisdiction of justices of the peace, that we can not obtain persons of proper qualifications to fill these offices. We submit that it has been the fault of our system heretofore which has caused us to have incompetent men in so many instances in these offices; and that whenever we so arrange our system as to make the positions honorable, profitable, and important, we may reasonably expect them to be filled by respectable and competent men.

It is also sometimes objected that they can not be expected to

perform such judicial duties well, because, generally, they are not lawyers. We submit that for the settlement of petty cases generally, such as occur between neighbors, an honest and sensible man, and six of the neighbors as jurymen, are more likely to get at the real merits and justice of the case, than an indifferent lawyer, with just enough of technical knowledge of the law to confuse him, would. And that the next best judge to a good lawyer for such cases, is an upright, sensible man.

It is also urged that the people can not be relied on to elect good justices of the peace. If we will but give business and emoluments enough to this class of officers to induce active business men to accept them, there is no just reason why the people may not be as successful in electing a good justice of the peace as in electing a good Governor or Supreme Judge.

By the sections we submit we give to the County Courts jurisdiction of all misdemeanors, the jurisdiction of which is not given to the justices of the peace, or conferred on the District Courts, embraces most of the more important cases of misdemeanor. And we give them jurisdiction, in civil cases, over sums from two hundred to five hundred dollars, with a few exceptional cases in which the jurisdiction is given to the District Courts. We also give them general probate jurisdiction.

And civil and criminal cases tried in this court may be taken by appeal to the District Courts; but the appeal goes up on the records of the County Courts, and is tried by the judge on the records, with but little consumption of time, and none of the expenses of a jury trial.

The original jurisdiction of the District Courts, under the sections we present, will extend to all felonies, and to a few classes of misdemeanors, which, it will be seen, is appropriately left with it; and to civil cases of five hundred dollars or more, and to a few exceptional classes of cases involving less than five hundred dollars, with the right of appeal to the Supreme Court in all of these cases, except those for gambling, which are not allowed to go beyond the District Courts.

By this system we shall relieve the Supreme Court docket of nearly all petty cases, and can make it practicable for a bench of five judges to dispose of the business of that court promptly and speedily, so as to meet the wants of the country for many years to come without the assistance of any other tribunal.

By this plan, and by the reduction of the terms of the District Courts to two a year, we so relieve the District Courts of the large mass of petty cases, as to enable us to greatly increase the

size of the districts and reduce the number of judges, and thereby save much of the past cost of the present judicial system, and secure a much cheaper judicial system than that presented by the majority of the committee, which gives the District Courts the same jurisdiction they have under the present system, only slightly relieved by the County Courts proposed, from which many litigants will be driven to the District Courts, where they can obtain a cheaper appeal to a higher court.

By the plan of the County Court we present, a considerable exclusive original jurisdiction is given to it, with trials not less than four times a year; and it is to be always open for the trial of criminal cases—fewer men (six) being required for its juries, and much expense, both to litigants and to the public, will be saved.

These advantages, with the great benefit it is believed will result from the large jurisdiction we propose to give justices of the peace, the localizing of the administration of the law in petty cases, and the great saving of time and expense which it is believed will be made to individuals and the public, constitute the chief grounds on which we rest our recommendation of the plan of jurisdiction for our courts which we present.

And we think the plan we present will make our judicial system cheap, speedy, efficient and satisfactory to the people.

The great importance we attach to this subject, is our excuse for stating our reasons in favor of this plan at such great length.

JOHN H. REAGAN,

P. R. SCOTT,

C. B. KILGORE,

MARION MARTIN.

“Sec. —. The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum, and the concurrence of a majority of the judges sitting shall be necessary to the decision of a case. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States, and of this State, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer, or judge of a court, in this State, or such lawyer and judge together, at least seven years. Said Chief Justice and Associate Justices shall be elected by the qualified voters of the State, at a general election; shall hold their offices for eight years, and shall each receive an annual salary of four thousand dollars, which shall not be increased or diminished during his term of office.

“Sec. — The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State; but in criminal cases its appellate jurisdiction shall only extend to cases of felony, to cases of misdemeanor involving official misconduct, and to cases of violation of the laws in relation to insurance and banking, and in civil cases to suits involving sums of five hundred dollars or more, exclusive of interests, and to suits, without reference to the amount in controversy, in behalf of the State, to recover penalties, fines, forfeitures, and escheats; to cases of divorce; to suits for the recovery of damages for slander and defamation of character, to suits for the trial of the title to land, and for the enforcement of liens on land; and to suits involving the constitutionality of a law, or the validity of a law imposing a tax. And it shall have such jurisdiction, by appeal, over interlocutory judgments of the District Courts, with such exceptions and under such regulations as may be prescribed by law. The Supreme Courts, and the judges thereof, shall have power to issue the writ of *habeas corpus*, and, under such regulation as may be prescribed by law, the said court, and the judges thereof, may issue the writ of *mandamus*, and such other writs as may be necessary to enforce its own jurisdiction. The Supreme Court shall also have power, upon affidavits or otherwise, as to the court shall seem proper, to ascertain such matters of fact as may be necessary to the proper exercise of its own jurisdiction. And it shall sit for the transaction of business from the first Monday in October until the last Saturday in June of every year, at the seat of government, and at not more than two other places.

“Sec. — The District Court shall have original jurisdiction in criminal cases of the grade of felony; in cases of misdemeanor involving official misconduct, in all cases of gambling, including betting on elections; and in all cases of violation of the laws in relation to insurance and banking. And they shall have jurisdiction in criminal cases, brought by appeal from the County Courts, in all cases of which the County Courts may have original jurisdiction which cases shall be tried on the record from the County Court, and without further right of appeal.

“In civil cases the District Courts shall have original jurisdiction of all suits in behalf of the State to recover penalties, fines, forfeitures and escheats; of all cases of divorce; of all suits to recover damages for slander and defamation of character; of all suits for the trial of the title to land, and to enforce liens on land; and of all suits involving the constitutionality of any law; or to test the validity of a law imposing a tax: and of all suits,

complaints and pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall not be less than five hundred dollars, exclusive of interest; and the said courts and judges thereof shall have power to issue the writs of *habeas corpus*, *mandamus*, *injunction*, *certiorari*, and all other writs necessary to enforce their own jurisdiction, and to give them a general superintendence and control over inferior tribunals. And they shall have appellate jurisdiction of all civil cases originating in the County Courts, which cases shall be tried on the record of the County Courts, without further right of appeal. And the District Courts shall have original and appellate jurisdiction and general control over County Courts, sitting as probate courts, for appointing guardians, granting letters testamentary or of administration; for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and such original jurisdiction and general control over executors, administrators, guardians and minors, and under such regulations as may be prescribed by law.

“Sec. —. There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law.

“Sec. —. The County Court shall have exclusive original jurisdiction of all misdemeanors, for which the fine or penalty, shall be not less than two hundred nor more than five hundred dollars, as the same are now or may be hereafter prescribed by law, except in case of official misconduct; and they shall have jurisdiction concurrent with the District Courts in all cases of gambling, including betting on elections, and cases of the violation of the laws in relation to insurance and banking. And they shall have exclusive original jurisdiction in all civil cases, when the amount involved is not less than two hundred nor more than five hundred dollars, exclusive of interest, except in such cases as are otherwise provided for in this constitution; and they shall have such other jurisdiction as may be conferred on them by law. And they shall have appellate jurisdiction of all cases, civil and criminal, of which justices' courts shall have original jurisdiction, when the judgment of the court appealed from shall exceed the sum of ten dollars, exclusive of costs, under

such regulations as may be prescribed by law, with such appellate jurisdiction from corporation courts, and other inferior tribunals, as may be prescribed by law. In all appeals from justices' courts, or corporation courts, or other inferior tribunals, the cases so appealed shall be tried *de novo* in the County Courts, and such trial shall be final, under such regulations, and with such exceptions, as may be provided by law.

The County Courts shall have the general jurisdiction of a probate court. They shall probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business appertaining to the estates of deceased person, minors, idiots, lunatics, persons *non compos mentis*, and common drunkards, including the settlement, partition and distribution of such estates, and to apprentice minors as provided by law. And the County Courts, or the judges thereof, shall have power to issue writs of mandamus, injunction, and all other writs necessary to the enforcement of the jurisdiction of said courts; and to issue writs of *habeas corpus* in cases where the offense charged is within the jurisdiction of the County Court, or any other court or tribunal inferior to said court.

The County Courts shall not have criminal jurisdiction in any county where there is a criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices' Courts and other inferior courts and tribunals, shall be to the civil or criminal District Courts under such regulations as may be prescribed by law.

"Sec. —. There shall be not less than four terms of the County Court a year, as may be provided by law, for the trial of civil cases, and the Legislature may prescribe what probate orders may be made and business done in vacation, and said court shall always be open for the trial of criminal cases. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law.

Grand juries, empannelled in the District Courts, shall inquire into misdemeanors, and all indictments therefor returned into the District Courts, shall forthwith be certified to the County Courts, or other inferior courts, having jurisdiction to try them, for trial, and if such indictments be quashed in the county, or other inferior courts, the person charged shall not be discharged, if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit.

A jury in the County Court shall consist of six men, but no

jury shall be empannelled to try a civil case, unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

“Sec. —. Each county shall be divided into five justice’s precincts, for each of which precincts there shall be elected, by the qualified voters thereof, a Justice of the Peace, who shall hold his office for two years, and until his successor shall be elected and qualified, who shall exercise such jurisdiction, and perform such duties, and receive such compensation, as may be prescribed by law. Justices of the Peace shall have jurisdiction in criminal matters of all cases where the penalty or fine imposed on conviction shall be for two hundred dollars or less; and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, in which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law. And the Justices of the Peace shall, *ex-officio*, be Notaries Public, and they shall hold their courts at such times and places as may be provided by law.

“Sec. —. The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in the District Courts, over which jurisdiction is given by this constitution to the County Courts or other inferior courts, to such county or inferior courts; and for the trial or disposition of all such cases by such county or other inferior courts.

[Mr. Brown in the chair.]

Messrs. Norvell and DeMorse gave notice of a minority report.

Mr. Stockdale moved to print two hundred copies of report.

Mr. Crawford moved to print five hundred copies.

Lost.

Two hundred copies ordered.

Mr. Fleming submitted the following report:

COMMITTEE ROOM, }
AUSTIN, October 20, 1875. }

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

The undersigned, one of the Committee on Revenue and Taxation, not being able to concur with the majority of said committee in many of the sections submitted by them, begs leave to submit the following article as a substitute for the majority report, and ask that the same may be adopted.

J. R. FLEMING, Chairman.

"ARTICLE —.

"TAXATION AND REVENUE.

"Section 1. Taxation shall be equal and uniform throughout the State, and all property in the State shall be taxed in proportion to its value, to be ascertained as may be provided by law, except such property as two-thirds of both Houses of the Legislature may think proper to exempt from taxation.

"Sec. 2. Taxes shall be levied and collected by general laws and for public purposes only.

"Sec. 3. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature.

"Sec. 4. All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises, and their capital stock.

"Sec. 5. The State tax on property, exclusive of the tax necessary to pay the public debt of the State, shall never exceed one-half of one per cent on the one hundred dollars valuation.

"Sec. 6. No county, city, town, or other municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatever.

"Sec. 7. The Legislature shall not impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof for county, city, town, or other municipal purposes, but may by general laws vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"Sec. 8. All land, whether owned by persons or corporations, shall be assessed for taxation, and the taxes paid in the county where situated. Lands not rendered for assessment shall be assessed by the proper assessing officer, and in no case shall be valued at less than fifty cents per acre.

"Sec. 9. Lands in unorganized counties shall be assessed and the taxes paid in the counties to which such unorganized counties shall be attached for judicial purposes.

"Sec. 10. Provision shall be made by the first Legislature for the speedy condemnation and sale of all lands for the taxes due thereon, and every year thereafter for the sale of all lands upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be im-

peached only for actual fraud; *provided*, the former owner shall, within two years from the date of the purchaser's deed, have the right to redeem the land upon the payment to the purchaser of three times the amount of money paid for the land.

"Sec. 11. There shall be an assessor of taxes in each county in this State, who shall be appointed or elected in such manner and under such regulations as the Legislature may direct.

"Sec. 12. The sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor.

"Sec. 13. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

"Sec. 14. The sheriff, county clerk, and chief justice shall compose a Board of Equalization in each county, to hear appeals by property holders, and determine the just value of the property rendered for taxation."

On motion of Mr. McCormick, one hundred copies of the report and article were ordered printed.

Mr. McLean withdrew his motion to reconsider and lay on the table the vote engrossing the article on the subject of immigration.

Mr. Stockdale moved to reconsider the vote engrossing the article on immigration.

[Mr. Brown in the chair.]

Mr. Pickett moved that the consideration of the motion be postponed to this day week, and that it be made the special order for 10 o'clock that day.

Carried.

On motion of Mr. Chambers, the Convention adjourned to 2½ P. M.

EVENING SESSION—2½ O'CLOCK.

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

BUSINESS ON THE TABLE.

The reports of the majority and minority of the committee on the subject of granting and reserving lands to railroads were taken up.

Mr. Nugent moved to postpone the consideration of the reports until 10 o'clock Monday, and made the special order for that hour.

On motion of Mr. German, the rules were suspended and the report and article on railroads taken up, and read the second time.

Mr. Brown offered the following amendment, to come in as an additional section:

"Sec. 9. The Legislature shall pass no law retrospective in its operations, which may impose on the people of any town, county, or other municipal sub-division of the State, a new liability in respect to transactions or considerations already passed, nor to revive obligations to any individual, association, or corporation, which may have previously become void by default of such individual association or corporation."

Mr. Nugent offered the following amendment:

"The Legislature shall pass no law extending the time for the construction, in whole or in part, of railroads, beyond the period limited in the laws providing for their construction."

Withdrawn.

Mr. Wade moved to recommit the article and amendments to the Committee on Railroad Corporations.

Lost.

Mr. Nugent withdrew his amendment.

Mr. Waelder offered the following amendment:

Strike out in line 21 the words "for public inspection," and insert therefor "for inspection by the stockholders of such corporation."

Adopted.

Mr. McCormick offered the following amendment:

Amend line 35, section 4, by inserting after the word "property" the words "or any part thereof."

Adopted.

Mr. Brown offered the following amendment:

Add as an additional section:

"Sec.—. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills, or mountains: *provided*, such town, or its citizens, shall grant the right of way through its limits, and sufficient ground for ordinary depot purposes."

Mr. Wade moved to amend the amendment by striking out the word "through" and inserting "within a half mile of the same."

Mr. Fleming moved the main question.

Lost.

Mr. Wade's amendment was lost.

Mr. Brown's amendment was adopted by the following vote:

YEAS—Allison, Abernathy, Arnim, Brown, Blassingame, Barnett, Burleson, Brady, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Dillard, DeMorse, Darnell, Davis of Wharton, Erhard, Ford, Fleming, German, Gaither, Graves, Henry of Smith, Henry of Limestone, Haynes, Johnson of Franklin, Johnson of Collin, Kilgore, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, Morris, Mills, McKinney of Denton, McKinney of Walker, McCormick, Murphy, Norvell, Nunn, Nugent, Pauli, Ramey, Rentfro, Robertson of Bell, Robeson of Fayette, Ross, Russell of Wood, Spikes, Scott, Sessions, Stockdale, Stayton, Sansom, Wade, Wright, Weaver—59.

NAYS—Abner, Blake, Cline, Cardis, Douglas, Dohoney, Davis of Brazos, Ferris, Holt, King, Killough, McCabe, Reagan, Reynolds, Russell of Harrison, Smith, Whitehead, Whitfield, West, Waelder—20.

Mr. Stockdale proposed to amend section 3, line 29, by striking out the word "all."

Adopted.

Mr. King proposed to amend section 3, line 28, after the word "and" insert "President or Superintendent."

Adopted.

Mr. Stayton offered to amend section 2, line 14, by striking out all after the word "State."

Mr. Sansom offered as a substitute for the amendment to strike out section 2.

Mr. Whitfield moved the previous question.

Carried.

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

YEAS—Abner, Ballinger, Cline, Cardis, King, Lockett, McCabe, Morris, Reynolds, Russell of Harrison, Stockdale, Stayton, Sansom, West, Waelder—15.

NAYS—Allison, Abernathy, Arnim, Blake, Blassingame, Barnett, Burleson, Brady, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Douglas, Dillard, DeMorse, Dohoney, Darnell, Davis of Brazos, Davis of Wharton, Erhard, Flournoy, Fleming, Ferris, German, Gaither, Graves, Holt, Henry of Smith, Henry of Limestone, Haynes, Johnson of Franklin, Johnson of Collin, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, Mills, Mitchell, McKinney of Denton, McKinney of Walker, McCormick,

Murphy, Norvell, Nunn, Nugent, Pauli, Reagan, Ramey, Rentfro, Robertson of Bell, Robeson of Fayette, Ross, Russell of Wood, Spikes, Scott, Sessions, Smith, Wade, Whitehead, Wright, Weaver, Whitfield—66.

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

YEAS—Cline, Cardis, Lockett, McCabe, Reynolds, Russell of Harrison, Stockdale, Sansom, West, Waelder—10.

NAYS—Allison, Abernathy, Arnim, Abner, Blake, Ballinger, Blassingame, Barnett, Burleson, Brady, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Douglas, Dillard, DeMorse, Dohoney, Darnell, Davis of Brazos, Davis of Wharton, Erhard, Flournoy, Fleming, Ferris, German, Gaither, Graves, Holt, Henry of Smith, Henry of Limestone, Haynes, Johnson of Franklin, Johnson of Collin, King, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, Morris, Mills, Mitchell, McKinney of Denton, McKinney of Walker, McCormick, Murphy, Norvell, Nunn, Nugent, Pauli, Reagan, Ramey, Rentfro, Robertson of Bell, Robeson of Fayette, Ross, Russell of Wood, Spikes, Scott, Sessions, Smith, Stayton, Wade, Whitehead, Wright, Weaver, Whitfield—71.

The question recurring upon the engrossment of the article, the same was put and the article ordered engrossed by the following vote:

YEAS—Allison, Abernathy, Arnim, Abner, Blake, Blassingame, Barnett, Burleson, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Douglas, Dillard, DeMorse, Dohoney, Darnell, Davis of Brazos, Erhard, Flournoy, Fleming, Ferris, German, Gaither, Graves, Holt, Henry of Smith, Henry of Limestone, Haynes, Johnson of Franklin, Johnson of Collin, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, Martin of Hunt, Morris, Mitchell, McKinney of Denton, McKinney of Walker, McCormick, Murphy, Norvell, Nunn, Nugent, Reagan, Ramey, Robertson of Bell, Robeson of Fayette, Ross, Russell of Wood, Spikes, Scott, Sessions, Smith, Stockdale, Wade, Whitehead, Wright, Weaver, Whitfield—64.

NAYS—Ballinger, Brady, Cline, Cardis, Davis of Wharton, Lockett, McCabe, Pauli, Reynolds, Rentfro, Russell of Harrison, Stayton, Sansom, West, Waelder—15.

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

FORTIETH DAY.

HALL OF REPRESENTATIVES,
AUSTIN, TEXAS, October 21, 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.

On motion of Mr. Scott, Mr. Norvell was excused for to-day.

Mr. Mills presented the petition of sundry citizens of Huntsville, in Walker county, on the subject of ex-convicts from the penitentiary, prohibiting them from remaining in Walker county after release.

Referred to Committee on Penitentiary.

Mr. McKinney presented the petition of Dugald McAlpine on the subject of public schools.

Referred to Committee on Education

Also, the petition of same person on the subject of wills.

Referred to Committee on Judiciary.

The Chair announced the following select committee on the ordinance of Mr. Martin, of Hunt, on the subject of poll-tax:

Messrs. Kilgore, Holt, Darnell, Chambers and Burleson.

Mr. Abernathy offered the following resolution:

Resolved, That weights and measures shall be uniform throughout this State, and a standard of the same may be established anywhere that application may be made

Referred to Committee on General Provisions.

Mr. Darnell submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 20, 1875. }

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

A majority of your Committee on Public Lands and Land Office, to whom was referred the article previously reported by them on the subject of public lands and land office, and various amendments offered to the same, together with various other resolutions, beg leave to say that they have considered the subject, and instruct me to report the accompanying article

Respectfully submitted,

N. H. DARNELL, Chairman.

“ARTICLE—

“Sec 1. There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles