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of Hunt, McKinney of Denton, McKinney of Walker, Norvell, Nunn, Reagan, Robertson of Bell, Spikes, Scott, Whitehead, Wright, Whitfield—28.

NAYS—Arnim, Abner, Brown, Ballinger, Blassingame, Bruce, Chambers, Cooke of San Saba, Cline, Douglas, Dohoney, Davis of Wharton, Erhard, Ford, Flournoy, Fleming, Ferris, Gaither, Graves, Holt, Henry of Smith, Johnson of Franklin, Johnson of Collin, King, Lockett, Lacy, McLean, Martin of Navarro, McCabe, Morris, Mills, Mitchell, McCormick, Murphy, Nugent, Pauli, Reynolds, Robeson of Fayette, Russell of Harrison, Russell of Wood, Sessions, Smith, Stockdale, Stayton, Sansom, Weaver, Waelder—47.

The article —, "Bill of Rights," was then finally passed by the following vote:

YEAS—Allison, Abernathy, Arnim, Brown, Ballinger, Blassingame, Barnett, Burleson, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Cardis, Douglas, Dillard, DeMorse, Dohoney, Darnell, Davis of Brazos, Davis of Wharton, Erhard, Ford, Flournoy, Fleming, Ferris, German, Gaither, Graves, Henry of Smith, Henry of Limestone, Haynes, Johnson of Franklin, Johnson of Collin, King, Kilgore, Killough, Lacy, Lynch, McLean, Martin of Navarro, McCabe, Morris, McKinney of Denton, McKinney of Walker, McCormick, Murphy, Norvell, Nunn, Nugent, Reagan, Robertson of Bell, Robeson of Fayette, Russell of Wood, Spikes, Scott, Sessions, Smith, Stockdale, Stayton, Sansom, Wade, Whitehead, Wright, Weaver, Whitfield, Waelder—66.

NAYS—Abner, Cline, Lockett, Mills, Mitchell, Pauli, Reynolds, Rentfro, Russell of Harrison—9.

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

FORTY-FIRST DAY.

HALL OF REPRESENTATIVES,
AUSTIN, TEXAS, October 22, 1875.

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

Journal of yesterday read and adopted.

Mr. Wright presented the petition of the Paris bar asking the passage of an ordinance validating certain acts of justices of the peace in Lamar county.

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Referred to Committee on Ordinances.

Mr. DeMorse submitted the following minority report and article:

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

The undersigned, a member of the Committee on the Judicial Department, being unable to agree with the majority of said committee in many of their recommendations, begs leave to submit to the Convention the accompanying plan of judicial administration.

He believes that the greatest relief to be afforded to the people by a new constitution, is to be found in a radical change of the judicial system, and a great reduction of its cost, and such a thorough reorganization as will make it largely self-sustaining, leave masses of the people, now forcibly drawn from their homes for weeks at a time (and most wrongfully at their own expense), to continue at their occupations, and eradicate as near as may be, that wrong of all systems heretofore—making the peaceful and uncontesting and laborious bear the burthens imposed by the litigious—in effect, forcing the best citizens to bear burdens they have not created, by changing wholly also that system by which the jails are kept full, and the counties are taxed to feed the inmates (the honest people being punished in order to punish the criminals), by providing prompt trial for offenders, and when they are convicted and adjudged to punishment, forcing them to labor in the service of the counties where the wrong is committed, and which have been burdened with their trial and punishment; and in pursuance of this object, so constituting the Supreme Court, that all appeals in criminal cases can be promptly responded to, instead of a delay of several months, during which the honest laborers of the country are taxed for food for the criminal drone. As a part of this system of reorganization and retrenchment, the undersigned proposes to give the trial of all petty criminal cases to the magistrates, and in all cases except those involving extreme punishment, avoiding cost of transportation to the Penitentiary, and placing the labor which now brings no compensation whatever to the State at the service of the counties, which can profitably employ it, under the direction of a county overseer, and may, by the use of that labor, keep the public roads always in good order, and establish county poor-farms, upon which paupers, by the aid of this labor, may become self-sustaining. In addition to this, the convict force may be employed upon any other character of labor beneficial to the counties, or be placed at the service of individuals for hire, as is now successfully and

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profitably done by the lessees of the State Penitentiary; the proceeds of such hire to go into the county treasury. Arrangements can be made for the security of the prisoners while at labor and their confinement at night.

There is another object to be held in view not less in magnitude—the preservation of the purity of adjudication and the preservation of life, liberty and property, by constituting juries only of intelligent citizens of good character, and, secondarily, the reduction of cost, by reducing the useless number composing them. The undersigned believes that it can not be demonstrated by reasoning that twelve intelligent men are more likely to give a correct verdict than five of that same number.

In fact, it is clear to him that the ponderous jury system heretofore in use, however reasonable it may have been when the masses of the people where it prevailed were ignorant, and its security to life and property lay in the hope that in that mass of ignorance a grain of intelligence could be found to direct the mass, or of stubborn honesty to resist corrupt tendencies, neither of these considerations is valuable now, if we will constitute intelligent juries, composed exclusively of persons of good character, and permitting lack of intelligence, as bounded by a knowledge of reading and writing, or a lack of good character, to constitute a right of peremptory challenge. Finally, by a small docket fee, the State can be largely reimbursed for the salaries paid to judges, by compelling those who desire the service of the courts to repay in some measure the cost.

All of which is respectfully submitted.

CHARLES DEMORSE,
One of the Committee.

"The Judicial Department of the State shall consist of a Supreme Court of two divisions; of twenty District Judges, having a convenient jurisdiction, to be defined by the Legislature; of a County Court for each organized county in the State; of such municipal courts as the Legislature may create, and a magistracy, of number to suit extent of territory within each county, and sufficient for the convenience of the people; and all of these officers shall be elective by the people.

"The Supreme Court shall be of two divisions, one known as the Supreme Court of Civil Jurisdiction, and the other as the Supreme Court of Criminal Jurisdiction; and the judges thereof shall be voted for with reference to the division to which they are to be assigned.

"The Supreme Court shall be an appellate court, but either branch shall have the power to issue writs of *habeas corpus, man-*

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damus and injunction, and shall have a general controlling superintendence over inferior courts.

"The criminal division shall take cognizance of all appeals from the District and County Courts, and the civil division shall hear all appeals from the District Court, and by *certiorari*, approved by a district judge, from the County Courts.

"The Supreme Court shall have power, upon affidavit or otherwise, to ascertain facts necessary to the just exercise of its jurisdiction.

"The civil division of the Supreme Court shall sit at stated periods, to be determined by the Legislature, at the seat of government, at ....., and at ....., unless, from reasons of public necessity, the Legislature shall provide otherwise.

"The criminal division shall sit continuously throughout the year, at the seat of government, with such interruptions only as may be created by ill health of the judges, or a recess in midsummer, nor exceeding two months.

"There shall be a clerk for each division of the Supreme Court, including one for each locality at which the civil division shall hold its sessions; which clerks shall be appointed by a majority of the judges in each division, and shall give such bonds as may be required by the court, and shall hold their offices during good behavior.

"Each division of the Supreme Court shall be composed of three judges, and each division shall elect its own chief justice, and in case of inability to agree, the Governor shall determine by appointment.

"The salaries of the Supreme Judges shall be $3500 each per annum, and shall be paid by the State upon stated claims to be approved by the Comptroller, and they shall hold their offices for the period of six years; and no citizen shall be eligible to a Supreme Judgship unless he shall have been engaged in the practice of law in this State for at least ten years, or shall have been a judge of a State court for that length of time, or shall have been ten years occupied by legal pursuits either in one capacity or both.

"A judge of the Supreme Court may be presented for impeachment, by either branch of that tribunal, upon charges of official misconduct, and that presentation being indorsed by the Governor, shall be tried by the Senate, the Attorney General acting as prosecutor in behalf of 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

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by the authority of 'The State of Texas,' and shall conclude, 'against the peace and dignity of the State.'

"The District Courts shall have jurisdiction in such counties as may be assigned to each district by the Legislature, and the judges thereof may authorize the issue of remedial process in adjoining districts whenever upon a sworn statement of facts and application for relief, they shall deem such action essential to the enforcement of equity.

"No Judge of a District Court shall be of bad moral character, less than thirty years of age; or shall be eligible to the station unless he shall have been engaged in the practice of the law in the State of Texas not less than five years prior to his entrance upon the duties of his office; and for any deficiency of any of these qualifications, or for misconduct in office, he may be impeached by presentation of two-thirds of the attorneys of the court residing in his district, and upon such impeachment indorsed by the Supreme Court of civil jurisdiction, he may be tried by the Supreme Court of criminal jurisdiction, and upon recognition and indorsement of the charges by the civil Supreme Court, the Governor shall suspend the exercise of his functions, and appoint a judge *pro tem.* for his district; and if the Criminal Supreme Court shall declare the charges proven, and an adequate cause for removal, the Governor shall, without delay, give thirty days' notice by proclamation, that a vacancy exists, and authorize an election to be held in the district at the termination of that time to fill the unexpired term.

"The District Court shall have two terms in each year, at such times as the Legislature shall direct, and may, by authorization of the Legislature, hold special terms.

"The District Court shall have original jurisdiction in suits for assumpsit for above five hundred dollars, and concurrent jurisdiction with the County Court for all sums not less than two hundred dollars, exclusive of interest, and all cases of breach of contract, fraud, slander, divorce, trial of title to land, for enforcement of liens, trial of right of property, either under levy or fraudulent seizure, where the amount involved exceeds two hundred dollars, and of all suits of whatever character involving the rights of the State, and of all suits, complaints or pleas whatever where the value in controversy exceeds five hundred dollars, having no regard to any distinction between law and equity, and of all criminal offenses of which the punishment is death or confinement for life, shall issue all remedial writs for the benefit of individuals, or writs of right to enforce its own jurisdiction,

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decide appeals from the County Courts, and shall have general supervision over all inferior tribunals

"The District Judges shall hold their offices for four years, and shall receive an annual salary, paid by quarterly installments out of the State Treasury, of two thousand dollars, which may be increased by the Legislature at its second session, or thereafter, to twenty-five hundred dollars.

"There shall be elected by the qualified voters of each county, every four years, a Clerk of the District Court, who shall keep the records of said court, and issue all writs and other processes, and who may be removed from official misconduct or incapacity, by presentment of a grand jury, and trial by a petit jury, and, in case of removal, his place may be temporarily filled by the judge until such time as his place may be filled by election, upon an order issued by the County Commissioners

"There shall be elected by the qualified voters of each county a Judge of the County Court, who shall have the same qualifications as a Judge of the District Court, the same tenure of office, and who shall be removable for similar causes, upon presentment of two-thirds of the attorneys of good character, residing in his county, which presentment being indorsed and approved by the District Judge of his district, shall be presented to the Governor, who shall indicate four District Judges outside of the district of the accused, who shall sit upon his case, and may decree his removal, either from failure of prescribed qualifications, incompetency or misconduct; and upon certificate of their decision of removal, the Governor shall declare a vacancy, and proceed as in the case of a removal of a District Judge; *provided,* that in all cases where such a court can not, from any cause, be organized, the class of business herein assigned to it may be done in the District Court

"The Judge of the County Court shall open it on the first Monday of every month, and keep it open on every day, except Sunday, as long as there shall be cases ready for trial, and criminal cases shall always have precedence; and it shall be the duty of the judge thereof to assign certain days in each month for the trial and investigation of probate business.

"The pay of a judge of a County Court shall be one thousand dollars, to be paid in quarterly installments out of the State Treasury; five hundred dollars to be paid quarterly out of the county treasury, upon warrants issued by the County Commissioners, and such fees for the administration of probate business as shall be defined by the Legislature; *provided,* that in counties where the fees of office are equal to the compensation al-

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lowed a judge of the District Court, there shall be no compensation paid out of either the State or the county treasury; and in no case shall any judge of the County Court receive more pay than the judge of a District Court.

"The County Court shall have jurisdiction of all such matters of controversy as are defined in the jurisdiction of the District Court, not exceeding in amount claimed five hundred dollars, exclusive of interest, except that it shall not grant divorces, or try suits for title of land, or suits for defamation of character. It shall have control and guardianship of the estates of deceased persons, and control of the persons and estates of minors and insane persons, persons *non compos mentis,* and common drunkards; it shall hear appeals from magistrates' courts in all civil cases above ten dollars in value, and in all trials by magistrates for misdemeanors or thefts, and shall have revisory power over magistrates' courts by *certiorari* or *mandamus;* shall have concurrent jurisdiction with magistrates of all assumpsits and claims for trespass or damages for over one hundred dollars, and over all thefts and misdemeanors; and shall have original jurisdiction of all criminal cases under the grade of capital, or whose punishment may be confinement for life; but an appeal from its judgments shall lie, either to the District Court or to the Criminal Supreme Court, at the option of the defendant, for all criminal offences charged, and in all removals to the District Court, the case shall be tried *de novo;* but in no case shall the State have a right of appeal in criminal cases. Appeals shall also lie of right, in civil cases, to either the District Court or the Civil Supreme Court.

"The Judges of the Supreme, the District, and the County Courts shall be conservators of the peace.

"There shall be a Clerk of the County Court, elected by the qualified electors of the county, every two years, who shall also be County Recorder, and *ex officio* Notary Public. He shall give bond in a sum to be determined by the County Judge, commensurate with his trust; shall keep the records of the county, and affix the seal to process and certificates; and he shall receive fees of office as prescribed by law, and in no case to exceed in the aggregate $3000 per annum; and he shall keep a fee-book, and enter daily, under the responsibilities of his oath, all fees received by him, which shall be examined by the County Commissioners at every regular meeting; and they shall require that whenever his fees, at the end of every year, from the commencement of his term as County Clerk and County Recorder, shall have exceeded the allowance above specified, the surplus, after

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deducting actual and necessary cost of assistance for recording, shall be paid into the county treasury; *provided,* that in counties with less than 8000 population, the offices of Clerk of the District Court, and Clerk of the County; may, by authority of the County Commissioners, be vested in one person, who shall receive the fees of both offices, and retain them, to an amount not exceeding that herein specified.

"There shall be elected in each county of the State, a Board of County Commissioners, which shall be composed of five persons, and shall meet on the first Monday of every second month, and which, when necessary to the public interest, may provide for extraordinary meetings, or may be convened in extraordinary session by the Judge of the County Court, and who shall receive for their services two dollars per day, while in session, to be paid out of the county treasury. And they shall keep their own records, in a bound book, to be kept in the office of the County Clerk, at all times subject to general inspection. And they shall have a general control of the county finances, and authorize the County Clerk to issue warrants upon the county treasury for the payment of county indebtedness, including the quarterly payment of the Judge of the County Court; and warrants for their own pay shall be issued by the County Clerk, after each meeting, upon calculation of time, as shown by their own records.

"There shall be elected every two years, by each county, a County Attorney, who shall represent the State in the District Court and in the County Court, and whose duty it shall be to prosecute all offenses charged by indictment or by information sustained by probable evidence, and to be vigilant in the obtainment of information; and where the offenses charged are within the scope of a magistrate's jurisdiction to prosecute before a magistrate, without delay, unless it shall be desirable for purposes of justice to have trial of the case by the County Court.

"The County Attorney shall receive a salary of three hundred dollars per annum, one-half to be paid by the State upon quarterly accounts approved by the Comptroller, and one-half by the county upon quarterly warrants issued by the County Clerk, approved by the County Commissioners; and the County Attorney shall receive such fees as may be allowed by the Legislature for all convictions procured by him.

"The County Commissioners of each county shall define the magistrate's precincts and voting precincts of the county, and shall authorize the election of not more than two magistrates for each precinct, who shall hold their courts monthly for determination of civil causes, and for examination and trial of persons

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charged with crime, on any day of the week except the Sabbath, and who shall be conservators of the peace, and shall make inquiry into all offenses committed within their cognizance, or reported upon testimony deemed reputable, and shall have power to summon persons and compel evidence of all offenses committed in their vicinage, and shall try all criminal offenses of a grade not exceeding theft to the value of twenty dollars, including thefts from a house, and all misdemeanors, including simple and aggravated assaults, assumpsits on note or open account, trespass and other suits for damages, where the damage alleged is not in excess of his civil jurisdiction, which is hereby fixed at two hundred dollars.

"Executions from magistrate's courts for amounts exceeding fifty dollars shall not be returnable under sixty days, and for amounts exceeding one hundred dollars not under four months. Appeals shall lie to the County Court in all judgments for money for more than ten dollars, and by *certiorari* for all amounts, and in all cases of removal the trial in the County Court shall be *de novo*.

"Cases of vagrancy charged may be tried before the nearest magistrate, or before the County Court, and decisions by magistrates in this class of cases may be revised by the County Court.

"There shall be elected by the qualified voters of each county one Sheriff, whose official term shall be two years, who shall be re-eligible but once successively, and who shall be removable by action of the District Court, on trial before jury, upon charges of official misconduct presented by the County Commissioners or by a grand jury; and in case of vagrancy, the Judge of the District Court shall appoint a Sheriff, who shall serve until a special election can be held under direction of the County Commissioners.

"The Legislature shall provide for the election of one Constable for each magistrate's precinct, who shall be removable for official misconduct by the County Court, upon trial by jury, upon complaint signed by twelve freeholders of the precinct, or by indictment found by a grand jury.

"The County Commissioners shall annually select from a list of the freeholders of the county, to be prepared by the County Assessor, a grand jury of twelve citizens of reliable intelligence, to serve as grand jurors, for the period of one year, who shall sit at each semi-annual term of the District Court, and at every third term of the County Court not held while the District Court is in session, and shall act as a grand inquest for the county, and shall find bills for all offenses against the law, with

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the assistance and information given by the county attorney, and with power to send for persons and papers; and nine grand jurors concurring, shall be sufficient to find a bill of indictment.

"Petit jurors for the trial of all causes, civil and criminal, before any of the courts of the State, shall be composed exclusively of intelligent citizens of good character, who can read and write, and a list of such citizens of good moral character shall be made out by the Clerk of the County Court from the Assessor's rolls, and he shall select from such prior to the sitting of each District and County Court a number presumably adequate for petit jury duty at each term, and shall not, if the number of qualified jurors in the county is sufficient, select one citizen twice in any one year; and if the parties so designated by him and summoned by the Sheriff, shall in any event prove insufficient, then the Sheriff shall summon talismen sufficient to complete the juries, always adhering to the rule of qualification herein prescribed, and no citizen shall be subject to jury duty who has attained the age of sixty years.

"Any party who shall bring suit in either the District or the County Court shall, before process shall issue thereon, pay a docket fee of not less than three dollars, which shall be retained by the clerk on deposit, and three days before the first term the clerk thereof shall remit the aggregate of such fees, by postal order or otherwise, to the Comptroller of the State, who shall return a certificate therefor, and, making an entry showing the source of payment and the amount, shall then pay it into the State Treasury, to the credit of the judicial fund, and shall be subject to appropriation by the Legislature.

"If after any day of trial in any court, the fees paid by litigants for jury service shall be more than sufficient to pay the jurors their prescribed compensation, then, at the close of the day, the clerk of the court or the magistrate, as may be, shall return the excess, *pro rata,* to the several litigants who have paid in the money.

"In all criminal offenses the punishment for which has heretofore been confinement in the State Penitentiary for a period not exceeding five years, the convict shall hereafter be sentenced to labor in the county where the offense was committed, upon the public roads and bridges, the county poor-farm, or such other labor as the County Commissioners shall direct, and the convict shall be in the same duress as heretofore when laboring for the State.

"Juries for the trial of all civil cases shall be composed of five citizens; and juries for the trial of all criminal cases, the punish-

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ment of which is not death or confinement or assignment to labor for life, shall be composed of seven persons; jurors for the trial of all cases the punishment of which is death or life-long labor or confinement, shall be composed of twelve persons; and persons subject to trial for any grade of offense, or being a party to a civil cause, shall have a peremptory challenge against all persons who can not read and write, or are not of good moral character; *provided,* that all persons are not challenged for disqualification or consanguinity or peremptory right under the law, shall be good jurors in criminal cases, who will swear that they entertain no bias or prejudice, and have not formed any previous opinion which may not be removed by hearing the evidence; *provided,* that after hearing the evidence any one juror shall from sickness be unable to continue the performance of his duties, he may be excused by the presiding judge, and the remaining jurors shall be competent to render a valid verdict.

"All parties bringing civil actions, who shall desire trial by jury, shall so state in their petitions, or when before magistrates, orally, and in such case shall deposit the jury fee for one day in advance; and all parties responding to actions shall state in their answers if they desire jury service, and if they do not, they shall not be taxed therefor; and if the defendant shall desire a jury, then he shall deposit the cost thereof for one day; and if he shall make good defense, the cost thereof shall be taxed against the plaintiff; and in the trial of all causes those in which juries are demanded shall be first tried; *provided,* that in all criminal cases involving more than ten dollars penalty, the party complained of shall have a right of trial by jury, without payment of fee; *and provided,* that in no case shall the county pay the cost of jury service, except for convictions in criminal cases.

"Every Board of County Commissioners shall have power to elect a county overseer, to superintend the labor of convicts, by work upon roads and bridges, county poor-farms, or any other labor beneficial to the county, under the general control of the said commissioners; and shall fix the compensation and prescribe the duties of said overseer, and shall provide for the payment of his salary out of the county treasury."

On motion of Mr. McLean, two hundred copies of the report and article were ordered printed.

Mr. Robertson, of Bell, submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 22, 1875

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

The undersigned, one of the minority of the Committee on

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Public Lands and Land Office, begs leave to dissent from the report of the majority of said committee, upon the subject of granting lands to railroads in the future, for the following reasons:

1. That the policy of Texas from the earliest settlement has been to get her domain settled with tillers of the soil. That she gave at first one league and one labor of land to heads of families, and one-fourth of a league to single men. That this policy was continued down to the present day, lessening the quantity as the county progressed in settlement, until it has been reduced to one hundred and sixty acres for heads of families and eighty acres for single men, always carrying as a condition to the various grants the condition of settlement and cultivation, and permanent residence in the country.

2. That the policy inaugurated in 1854, known as the general railroad law, had for its avowed object the more speedy settlement of the country than could be accomplished under the former policy; the introduction of foreign capital into the country; the defense and settlement of the wild and unoccupied lands along the entire length of the parallel of thirty-two degrees north latitude, embracing the finest country in Texas.

3. That intersecting roads should connect with the coast, bays and bayous of the Gulf of Mexico.

4. That to carry out the first proposition the Southern Pacific was chartered, running laterally through the State on the parallel of 32 degrees, north latitude, in the direction of New Mexico and California.

That sixteen sections to the mile was granted along the line of said road.

That within twelve years, these lands were to be alienated, carrying with the grant the idea that sixteen families to the mile would be settled along the line of 32 degrees for a distance of over seven hundred miles, or eleven thousand two hundred families, actual occupants and tillers of the soil, who would not only afford protection to the trans-continental commerce conducted on and over this great highway through Texas, but would have afforded ample protection to all of the country south of the said parallel of 32 degrees.

5. That this highway of the world would be intersected at various points by roads running from the coast, say four or five, averaging four hundred miles in length each, receiving sixteen sections to the mile, assuring also the actual settlement of twenty-five thousand six hundred families, tillers of the soil. And reserving to the government, free from location or preemption along the line of the Southern Pacific, eleven thousand

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two hundred sections, or seven millon nine hundred and seventy-nine thousand two hundred acres of land, and along the lines of the intersecting roads from the seaboard twenty-five thousand six hundred sections, or sixteen million four hundred and nine thousand six hundred acres.

There can be no question that this policy was conceived in wisdom, and sound, far-seeing statemanship and eminently worthy of the great minds of Houston, Rusk, and other eminent men of Texas, who mapped it out.

6. There is no doubt that the framers of the railroad law of 1854, contemplated that its provisions should be carried out in good faith.

That the roads chartered under its provisions should be built with foreign capital within twelve years, and all the railroad lands, sixteen sections to the mile, alienated within the contract time, and occupied by actual settlers, assuring complete protection to all Texas from the inroads and depredations of the hostile Indians on the country south of thirty-two degrees.

7. That Texas would thereby have been relieved from a large tax that has been, and is still, levied annually upon the values and general industries of the country to defend the line of thirty-two degrees across the entire length of the State.

That with this and the intersecting roads from the coast, every portion of Texas would have been completely built up long since.

That the charters carried on their face the fact that they were all to terminate in twelve years from their respective dates, and were not to be extended beyond that time.

That the history of the Southern Pacific and other railroads for the last twenty years shows that failure after failure to comply with their engagements has followed.

That instead of introducing foreign capital as an equivalent for the large bodies of land donated, and the privilege of operating railways in the State, that in less than two years from the date of the first charter, they secured the passage of the act of August 13, 1856 (article 1682, Oldham & White), *requiring* the loan of the school fund to railroads for the term of ten years, at the low rate of six per cent., when it could have been loaned at ten per cent.

That the Legislatures, instead of enforcing a compliance by the railroads with the terms of their charters, as they ought to have done in justice to the country, granted one extension after another, one gratuity after another, until now they base a

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claim of vested right, not by virtue of any contract, but upon the grace heretofore shown to them.

They now claim as a vested right what was only intended as, and was in truth, a gratuity.

They aim to control in future, as they have done in the past, the Legislatures of the country. Their appetites are as keen as ever. They demand not only a further extension of their contracts, but demand that the constitution *shall* be left open to further railroad grants by the Legislature.

The undersigned would not destroy, or assent to the destruction of any vested right, of any character whatever, that is based on the laws of the country, but feels bound to enter his solemn protest against the policy of leaving the Legislature authorized to continue the donation of the public domain of the State to railroads—a policy that has absorbed nearly one-fourth of the entire area of Texas, the rightful inheritances of, and should have been held for the use and occupation of the descendants of the men who paid for it with their money and their lives; a policy that has taken its own time to pass through the most densely populated sections of the State, destroying the value, in a great degree, of all the towns along its route, built at great trouble and expense by the pioneers of the country; a policy that has fastened on many of the towns and counties of the State a debt that will not only absorb all the profits from the industries of the present generation, but holds a lien on the children of the country for many succeeding generations; a policy that has done more to demoralize legislation, and destroy confidence in the minds of the people toward their Legislatures, than any other question that has ever come before the country, and should now be closed.

The undersigned further believes that if there is still left any public domain that has not been heretofore appropriated, that it should be left for actual settlers, as pre-emptions, and for sale, the proceeds applied to the payment of the debt of the State.

All of which is respectfully submitted.

E. S. C. ROBERTSON, Chairman.

On motion of Mr. Cline two hundred copies were ordered to be printed.

Mr. Ramey offered the following:

COMMITTEE ROOM,
AUSTIN, October 22, 1875.

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

Your Committee on Engrossed and Enrolled Ordinances begs leave to report to your honorable body that they have carefully

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examined and compared Article —, "Legislative Department," and find the same correctly engrossed.

Respectfully, WM. NEAL RAMEY, Chairman.

On motion of Mr. German, two hundred copies of the engrossed ordinance were ordered printed.

Mr. West submitted the following report:

COMMITTEE ROOM,
AUSTIN, October 21, 1875.

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

The Committee on General Provisions, to whom was referred a memorial of Dr. L. G. Lincecum, of Travis county, calling the attention of the Convention to the propriety of inserting in the constitution a clause making it the duty of the Legislature to pass a law placing the practitioners of the different schools of medicine on an equality, and providing for the establishment of medical colleges in the State, open alike to all students of medicine, have carefully considered the same, and have instructed me to report, that while we recognize the importance of the subjects treated of in the memorial, they deem it best to leave the Legislature free to act on the matter as they may deem best, and that it is not expedient or proper to insert in the constitution any clause on the subject.

They therefore instruct me to return the memorial, and recommend that its prayer be not granted.

Respectfully submitted,
C. S. WEST, Chairman.

Mr. McLean offered the following sections:

"Sec. —. In all civil or criminal actions for slander or libel, the truth of the words spoken, published, or written, may be given in evidence to the jury; and if it shall appear that the alleged slanderous or libellous speech, publication, or writing, is true, and was proper for public information, and was spoken, published, or written, with good motives and for justifiable ends, it shall be a sufficient defense."

Referred to Committee on General Provisions.

"Sec. —. The Legislature shall, at its first session after the ratification of this Constitution, provide pensions for the disabled and indigent surviving soldiers of the revolution, by which the independence of Texas was achieved in the year 1836."

Referred to Committee on State Affairs.

The hour having arrived, the special order, viz: the majority and minority reports of the Committee on Revenue and Taxation, with accompanying articles, were taken up.

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[Mr. Brown in the chair.]

Mr. Reagan offered the following as a substitute for the article reported by the majority.

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

"The Legislature shall have power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession; *provided,* that the term occupation shall not be construed to apply to pursuits either agricultural or mechanical.

"Assessors and collectors of taxes shall be appointed in such manner and under such regulations as the Legislature may direct."

Mr. Waelder proposed to amend the substitute by adding the following sections:

"Section 1. The Legislature shall provide for the appointment of a Board of Appraisers in each county, who shall appraise for taxation all property in the county, whether owned by residents or non-residents, according to its value; and all taxes levied or assessed upon the property so appraised may be paid to the collector of taxes of the county or the Comptroller of the State.

"Sec. 3. All railroads and other corporations of this State, or doing business therein, shall be subject to taxation for State, county, or municipal and other purposes on the real and personal property owned or used by them.

"Sec. 4. There shall be a collector of taxes in each county in this State, who shall be elected in such manner and receive such compensation as may be provided by law.

"Sec. 5. The Legislature shall provide for the collection of taxes and for the sale of property upon which taxes remain unpaid, and that sale, made under such proceedings as may be provided, shall vest title in the purchaser at such sale.

"Sec. 6. The State tax on property, exclusive of the tax necessary to pay the public debt and the interest thereon, shall never exceed fifty cents on the one hundred dollars valuation."

Mr. McLean raised the point of order, that the article accompanying the report of a minority of the committee was not before the Convention; that it must be presented separately by a member, and not come in with a report of a minority of the committee. [Barkley, p. 62.]

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

EVENING SESSION—2½ O'CLOCK.

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

Question pending when the Convention adjourned—viz., "Revenue and Taxation"—again taken up, with pending amendment.

On motion of Mr. McKinney, of Walker, Mr. Lynch was excused from attendance on the Convention on account of sickness.

Mr. Ramey made the following report:

COMMITTEE ROOM,
AUSTIN, October 22, 1875.

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

SIR—Your Committee on Engrossed and Enrolled Ordinances beg leave to report to your honorable body that they have carefully examined and compared "Article —, On Railroads," and find the same correctly engrossed. Respectfully,

WM. NEAL RAMEY, Chairman.

The following communication was taken from the President's desk and read:

DEPARTMENT OF STATE,
AUSTIN, October 22, 1875.

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

SIR—I have the honor to acknowledge the receipt of a certified copy of a resolution adopted by the Convention, October 21, 1875, of which the following is a copy:

"*Resolved,* That the Secretary of State, so far as he can, is requested to furnish to the Convention a list of all railroad charters granted since the commencement of the Legislature of 1866, under which no road has been built.

"*Resolved, further,* That he is requested to transmit to the Convention a list of all companies, of whatever nature or kind, incorporated under the act "Concerning Private Corporations," approved December 2, 1871, and the various acts amendatory of or supplementary thereto"

AUSTIN, TEXAS, October 22, 1875.

"I certify that the above resolution was adopted by the Constitutional Convention, on the 21st day of October, 1875.

[Signed.] "LEIGH CHALMERS,
"Secretary Convention.

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In response to said resolution I beg leave to state that there is nothing in this office to show what railroads have *not been* built. All that appears on that subject is this: when a railroad company completes a section of its road according to its charter, application is made to the Governor to appoint an engineer to inspect the section completed; when the report of the engineer is received by the Governor it is filed in this office. Whether or not, all the work that has been completed has thus been inspected, it is impossible to determine from any records or papers in this office. I find upon examination of the special laws, passed since the commencement of the Legislature in 1866, that eighty-three railroad charters have been granted by the Legislature since that time It would require several days to make a list of all of these, giving the caption of the acts (which is the shortest method). I therefore give the pages on the index of the special laws of 1866, 1870, 1871, first and second session 1873, 1874 and 1875.

Special laws 1866, eleventh Legislature, index page 3.

Special laws 1870, twelfth Legislature, index page 340.

Special laws, first session 1871, twelfth Legislature, index p. 554.

Special laws, second session 1871, twelfth Legislature, index p. 274.

Special laws, 1873, thirteenth Legislature, index page 826.

Special laws, 1874, fourteenth Legislature, index page 103.

Special laws, 1875, fourteenth Legislature, index page 158.

Where a list of all railroad charters granted since the war can be found, and which, it is hoped, will answer the purposes of the Convention.

I find that under the act concerning private corporations, approved December 2, 1871, and the acts amendatory of, and supplementary thereto, five hundred and sixty charters have been filed in this office up to this date. The printed reports of the Secretary of State contain lists of all those filed prior to December 1, 1874, but do not include those filed since that date, of which there are two hundred and forty-five. To make this list complete will require several days. This list, as well as a list of all charters granted to railroads since the commencement of the Legislature in 1866, will be furnished as soon as they can be prepared if the information herein furnished is not sufficient for the purpose of the Convention.

I have the honor to be, very respectfully,

Your obedient servant,

A. W. DeBerry,

Secretary of State.

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Mr. Graves moved to lay the substitute and amendment on the table.

Lost by the following vote:

YEAS—Abernathy, Arnim, Brown, Blassingame, Barnett, Bruce, Chambers, Cardis, Dillard, DeMorse, Flournoy, Fleming, Ferris, Gaither, Graves, Holt, Henry of Limestone, Johnson of Franklin, Johnson of Collin, Killough, McLean, Martin of Navarro, Martin of Hunt, Mills, Mitchell, McKinney of Denton, McKinney of Walker, Nugent, Ramey, Rentfro, Russell of Wood, Wade, Whitehead, Whitfield—34.

NAYS—Allison, Abner, Blake, Ballinger, Burleson, Crawford, Cook of Gonzales, Cooke of San Saba, Cline, Douglas, Dohoney, Darnell, Davis of Brazos, Davis of Wharton, Erhard, Henry of Smith, Haynes, King, Kilgore, Lockett, Lacy, Morris, Norvell, Nunn, Pauli, Reagan, Reynolds, Robertson of Bell, Robeson of Fayette, Spikes, Scott, Sessions, Smith, Stockdale, Stayton, Sansom, Weaver, West, Waelder—39.

The question on the adoption of Mr. Waelder's amendment was put, and the amendment lost.

On motion of Mr. Nunn, Mr. Douglas was excused for ten days from Monday next.

Mr. Dohoney offered the following amendment to Mr Reagan's substitute:

"Section 1. The *ad valorem* taxation for State revenue shall never exceed one-half of one per cent. And no higher rate of taxation than that levied for State purposes shall ever be levied by any county town or city; *provided,* that in cities of over ten thousand population, a higher rate of taxation may be imposed, not to exceed .... per cent.; *and provided further,* that counties may levy and collect sufficient taxes to meet their present indebtedness.

"Sec. 2. All property, real and personal, in organized counties, whether belonging to individuals or corporations, shall be assessed and the taxes paid in the county where the property is situate. Property situate in unorganized counties may be assessed and the taxes paid thereon in such manner and under such regulations as the Legislature may prescribe.

"Sec. 3. There shall be elected in each county, at the general elections, every two years, an assessor and collector of taxes, who shall hold his office for two years, and until his successor is qualified, and whose compensation and whose duties shall be prescribed by law."

Accepted by Mr. Reagan.

Mr. Fleming offered the article reported by him as one of the

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Committee on Taxation and Revenue, as a substitute for the substitute of Mr. Reagan, and the article reported by the majority of said committee.

Adopted by the following vote:

YEAS—Allison, Abernathy, Arnim, Abner, Brown, Ballinger, Blassingame, Barnett, Burleson, Bruce, Crawford, Chambers, Cook of Gonzales, Cooke of San Saba, Cardis, Douglas, Dillard, Darnell, Davis of Wharton, Erhard, Ford, Flournoy, Fleming, Ferris, German, Graves, Holt, Henry of Smith, Haynes, Johnson of Franklin, Johnson of Collin, Killough, Lacy, Martin of Navarro, Martin of Hunt, McCabe, Morris, Mitchell, McKinney of Denton, McKinney of Walker, McCormick, Norvell, Nunn, Nugent, Pauli, Reagan, Reynolds, Rentfro, Russell of Wood, Spikes, Scott, Stockdale, Stayton, Sansom, Wade, Whitehead, Weaver, Waelder—58.

NAYS—Cline, DeMorse, Dohoney, Gaither, King, Kilgore, Lockett, McLean, Mills, Ramey, Robertson of Bell, Robeson of Fayette, Sessions, Wright, Whitfield, West—16.

Upon calling the roll, Mr Henry of Limestone stated that he had paired off with Mr. Ross, who was absent; that Mr. Ross would have voted yea, and Mr Henry nay.

On motion of Mr. Ballinger, the rule was suspended, and "Article —, Judiciary," was taken up and made the special order for Tuesday next at 10 o'clock.

On Motion of Mr. Brown, the rule was suspended, and "Article —, Railroads," was taken up and one hundred copies ordered printed.

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

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FORTY-SECOND DAY.

HALL OF REPRESENTATIVES,
AUSTIN, TEXAS, October 23, 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.

On motion of Mr. Lacy, Mr. Davis, of Brazos, was excused until Tuesday next.

Mr. Cooke, of San Saba, presented the memorial of sundry citizens of Lampasas county, on the subject of local option.

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