

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.

sition to reject, and the Convention brought to a direct vote, which resulted in rejecting the amendment by the following vote:

Mr. McKinney, of Walker, declined to vote for reasons above stated.

YEAS—Abernathy, Abner, Arnim, Barnett, Blassingame, Brown, Bruce, Burleson, Cooke of San Saba, Crawford, Darnell, Davis of Wharton, Dillard, Ferris, Fleming, Flournoy, German, Graves, Haynes, Holt, Johnson of Collin, Lacy, Lynch, McCormick, McKinney of Denton, McLean, Mitchell, Martin of Navarro, Martin of Hunt, Nugent, Pauli, Rentfro, Reynolds, Ross, Russell of Wood, Sansom, Scott, Spikes, Wade, Whitfield—40.

NAYS—Allison, Ballinger, Blake, Brady, Cook of Gonzales, Cooley, Davis of Brazos, DeMorse, Dohoney, Gaither, Henry of Limestone, Kilgore, Killough, Lockett, Moore, Murphy, Norvell, Nunn, Ramey, Reagan, Robertson of Bell, Robison, of Fayette, Russell of Harrison, Smith, Stayton, Stewart, Stockdale, Waelder, West, Whitehead, Wright—31.

Mr. Darnell offered the following amendment to come in after the word "situated," in section 10, line 46: "But the Legislature may by a two-thirds vote authorize the payment of taxes of non-residents to be made at the office of the Comptroller of Public Accounts."

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

FIFTIETH DAY.

HALL OF REPRESENTATIVES,
AUSTIN, TEXAS, November 2, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by the Rev. W. H. Dodge, of the Baptist Church, at Austin.

Journal of yesterday read and adopted.

On motion of Mr. Dohoney, Mr. Wright was excused indefinitely.

On motion of Mr. Mitchell, Mr. Reynolds was excused for three days from to-day.

On motion of Mr. Waelder, Mr. Cooley was added to the Committee on Judicial Apportionment, in place of Mr. King, excused.

On motion of Mr. Burleson, Mr. Haynes was excused for to-day on account of sickness.

On motion of Mr. Fleming, Mr. McKinney, of Walker, was added to the Committee on Judicial Apportionment.

Mr. Ballinger presented a memorial signed by the Mayor and Board of Aldermen of Galveston, the Chief Justice and Justices of the Peace of Galveston county, the president and officers of the Chamber of Commerce of Galveston, by the Cotton Exchange of Galveston, and over twelve hundred citizens of Galveston county, asking authority for counties and cities and towns on the coast to issue bonds and levy taxes to construct breakwaters and other improvements, and asking State aid in the same.

Referred to Committee on Municipal Corporations.

Mr. Ramey made the following report:

COMMITTEE ROOM,

AUSTIN, November 2, 1875. }

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

SIR—Your Committee on Engrossed and Enrolled Ordinances would respectfully report to your honorable body that they have carefully examined and compared “Article — The Public Free Schools,” and find the same correctly engrossed.

Respectfully,

WM. NEAL RAMEY, Chairman.

Mr. Cook, of Gonzales, reported as follows:

COMMITTEE ROOM,

AUSTIN, November 2, 1875. }

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

Your Committee on Printing and Contingent Expenses, to whom was referred resolution with regard to the inefficiency of the printers employed to do the current printing of the Convention, and recommending that the contract be rescinded, have had the same under consideration and instruct me to report: That owing to the large amount of printing coming to the hands of the printers the past few days, the work was somewhat delayed, and mistakes occurred. This delay was unavoidable, and the errors only such as are likely to occur with any printers under the circumstances. The printers are now well up with their work, and your committee feel assured that the work will, in the future, be well and promptly done.

Your committee can see no sufficient cause for rescinding the printing contract in the premises, and ask to be discharged from further consideration of the subject

W. D. S. COOK, Chairman

Adopted.

Mr. Sansom offered the following resolution:

Resolved, That it shall be the duty of the State to provide for the custody and maintenance of indigent lunatics.

Referred to Committee on General Provisions.

Mr. McKinney, of Denton, offered the following resolution:

Resolved, That the Committee on General Provisions inquire into the propriety of inserting a clause in the constitution requiring any person who shall maliciously prosecute and indict another before a grand jury in this State, or shall, in any way corruptly procure the same, shall pay all costs and damages resulting from such malicious indictment, and be subject to such other penalties as may be prescribed by law.

Referred to Committee on General Provisions.

Mr. Ferris offered the following resolution:

Resolved, That the following section be made a part of the constitution:

“Sec. —. The Legislature may from time to time establish new counties for the convenience of the inhabitants of such new county or counties; *provided*, that no new county shall be established which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles, unless by consent of two-thirds of the Legislature; nor shall any county be organized of less contents; *provided further*, that all counties heretofore created are hereby declared to be legally constituted counties. Every new county, as to the right of suffrage and representation, shall be considered as part of the county or counties from which it was taken, until the next apportionment of representation thereafter; *provided also*, that no new county shall be laid off, when less than one hundred and seventy-five qualified jurors are at the time resident therein; nor where the county or counties from which the new county is proposed to be taken, would thereby be reduced below that number of qualified jurors.”

Referred to Committee on Counties and County Lands.

Mr. Mills offered the following resolution:

Resolved, that the following shall be a section of the constitution:

“Sec. —. The Legislature shall provide by law for the exemption from garnishment of the wages of laborers for hire who are heads of families; and may also provide such for single persons, under such limitations and regulations as may be prescribed by law.”

Referred to Committee on General Provisions.

On motion of Mr. Russell, of Harrison, Mr. Abner was excused until Thursday morning.

On motion of Mr. Whitfield, Mr. Arnim was excused for five days.

On motion of Mr. Martin, of Navarro, Mr. Abernathy was added to the Committee on Judicial Apportionment.

UNFINISHED BUSINESS.

“Article —, Revenue and Taxation,” again taken up.

Mr. Darnell’s amendment, pending on adjournment, being under consideration, Mr. Russell, of Harrison, proposed to add to the amendment, after the words “non-residents,” the words “of counties.”

Accepted, and the amendment as amended adopted by the following vote:

YEAS—Abernathy, Allison, Ballinger, Barnett, Brady, Brown, Burleson, Cardis, Chambers, Cook of Gonzales, Cooke of San Saba, Cooley, Crawford, Darnell, Davis of Brazos, Davis of Wharton, DeMorse, Dohoney, Erhard, Ferris, Flournoy, Gaither, German, Henry of Limestone, Johnson of Collin, Kilgore, Killough, Lacy, Lockett, Lynch, McCormick, McLean, Moore, Murphy, Martin of Navarro, Martin of Hunt, Norvell, Nunn, Pauli, Ramey, Reagan, Robertson of Bell, Robison of Fayette, Russell of Wood, Sansom, Scott, Sessions, Smith, Spikes, Stayton, Stewart, Wade, Waelder, West, Whitehead, Whitfield—55.

NAYS—Arnim, Blassingame, Bruce, Dillard, Fleming, Graves, Holt, Mills, Mitchell, Nugent, Ross—11.

Mr. Russell, of Harrison, on roll call, stated that he would vote yea but for having paired off with Mr. Abner.

The hour having arrived, the special order was taken up, viz: Mr. Johnson’s (of Collin) resolution to have night sessions.

Mr. Darnell moved to postpone the consideration of the resolution until Monday next at 10 o’clock.

Carried.

Pending business resumed, Mr. Moore offered the following amendment as a substitute for Sec. 8:

“Sec. 8. The State tax on property, exclusive of the tax necessary to pay the public debt, shall never exceed fifty cents on the one hundred dollars valuation, and no county, city or town shall levy more than one-half of said State tax, except for the payment of debt already incurred, and for the erection of public buildings, not to exceed fifty cents on one hundred dollars valuation, in any one year, and except as in this constitution is otherwise provided.”

Adopted.

Mr. Russell, of Harrison, offered the following substitute for section 9:

“Sec. 9. No property liable to taxation in any county, city

or town, shall be released from the payment of taxes levied for State or county purposes, except in cases of public calamity."

[Mr. Stockdale in the chair.]

Mr. Russell, of Harrison, withdrew his substitute.

Mr. Waelder proposed to amend section 9, line 43, by inserting after the word "of" the words "or property in."

Adopted.

Mr. DeMorse offered the following additional section to come in after section 10:

"Sec. —. The Comptroller of the State shall prepare a list of all lands assessed or unassessed, for each separate county, and assess upon the portion unrendered all the present and back tax due thereon, and transmit to each collector of taxes the list prepared for his county, upon which list the collector shall proceed as provided by law."

On motion of Mr. Fleming, the amendment was laid on the table.

Mr. Stayton offered the following as a substitute for section 12:

"Sec. 12. Laws shall be enacted by the Legislature, at the first session thereof after the adoption of this constitution, providing for the speedy judicial condemnation by a proceeding *in rem* and sale of lands for the taxes due thereon, and the deed to the purchaser at such sale, when made in accordance with the decree of the court authorizing the sale to be made, shall be held to vest title in him to such lands, subject to impeachment only for such causes as would render the decree of the court directing the sale void, or for fraud upon the part of the officer selling—of the buyer, or of the collector of taxes; *provided, however*, that the former owner shall have the right within two years after the decree confirming the sale, to redeem the land so sold by the payment to the purchaser of the amount of money paid for the land, together with such sum as the purchaser of the land has paid as taxes thereon after his purchase, with interest on such sums from the time of payment, at the rate of twenty per cent. per annum."

On motion of Mr. Pickett, the substitute was laid on the table.

Mr. Waelder offered the following substitute for section 12:

"Sec. 12. The Legislature shall, at its first session after the adoption of this constitution, provide for the sale of all lands upon which taxes remain unpaid, and for a like sale in each year; and it shall also provide for the vesting of title in the purchaser at such sale, and for the right of redemption by the owners of land so sold."

On motion of Mr. Fleming, laid on the table.

Mr. Stewart offered the following additional section:

"Sec. —. The Legislature may authorize counties, cities and towns, by a vote of the freeholders thereof, to levy and collect a special tax for the support of public common free schools."

Upon the question of the adoption of the amendment, the yeas and nays were called, and the amendment lost by the following vote:

YEAS—Ballinger, Brown, Cook of Gonzales, Cooley, Crawford, Darnell, DeMorse, Dohoney, Fleming, Ford, Kilgore, Lockett, McCormick, McLean, Mitchell, Morris, Martin of Navarro, Martin of Hunt, Nunn, Pauli, Reagan, Smith, Stewart, Waelder, West, Whitfield—26.

NAYS—Abernathy, Allison, Arnim, Barnett, Blake, Blassingame, Bruce, Burleson, Chambers, Cooke of San Saba, Davis of Brazos, Dillard, Erhard, Flournoy, Gaither, German, Graves, Henry of Limestone, Holt, Johnson of Collin, Killough, Lacy, Lynch, McKinney of Denton, McKinney of Walker, Moore, Murphy, Norvell, Nugent, Robertson of Bell, Robison of Fayette, Ross, Russell of Harrison, Russell of Wood, Sansom, Scott, Spikes, Stayton, Stockdale, Wade, Whitehead—41.

Mr. Brown offered the following as a substitute for sections 13 and 15:

"Sec. 13. There shall be elected in each county of the State an assessor of taxes and a collector of taxes, each of whom shall hold his office for two years, and until his successor shall be elected and qualified; *provided*, that in counties having less than two thousand qualified electors, the duties of collector shall be performed by the sheriff of each county respectively. In the first election provided for by this Convention the fact shall be determined by the number of qualified voters in each county. In all succeeding elections the fact shall be determined by the whole number of votes cast at the last preceding general election in each county."

Mr. Ballinger called up the motion to reconsider the vote to strike out the words "condemnation and" from section 12, line 56.

Carried.

Mr. Sansom offered the following amendment:

Strike out the words "condemnation and," and after the word "sale" insert "by levy, as in cases of personal property."

Lost.

Mr. Ballinger's amendment to strike out the words "condemnation and" was adopted.

Mr. Crawford offered the following substitute for the section:

"Sec. —. Provision shall be made by the Legislature for the sale of all lands for the taxes due thereon."

Mr. Murphy offered the following as a substitute for the substitute and section:

"Sec. —. The Legislature shall at its first session after the adoption of this constitution provide for the manner of enforcing liens on real estate incurred for non-payment of taxes."

Mr. Fleming moved to lay both substitutes on the table.

A division of the question was ordered.

Mr. Murphy's substitute was laid on the table.

On motion of Mr. Cook, of Gonzales, the Convention adjourned to 2½ P. M., pending Mr. Crawford's substitute.

EVENING SESSION—2½ o'clock.

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

Question pending on adjournment, viz: Mr. Crawford's substitute was taken up.

Mr. Ballinger offered the following as a substitute of the section and substitute:

"Sec. —. The Legislature, at its first session, shall provide for the speedy and effective collection of taxes in this State, and for the sale of any property, real or personal, for the payment of all taxes of any taxpayer; and the Legislature shall have full power to declare the effect of a tax deed in favor of the purchaser; and to regulate the time and terms for the redemption of property purchased at tax sales."

Mr. Russell, of Wood, moved to close debate on the amendment.

Carried.

Mr. Crawford, by leave, withdrew his substitute.

Mr. Ballinger's substitute was lost.

Mr. Russell, of Harrison, proposed to amend section 12, line 56, by adding after the word "land," the words "and other property."

Adopted.

Mr. Stewart offered the following amendment:

In lines 59 and 60 strike out all between the words "held" and "provided" and insert "to be *prima facie* evidence of title, and that all the prerequisites to the sale have been complied with."

[Mr. Brown in the chair.]

On motion of Mr. Fleming, the main question on the amendment was ordered, and amendment lost.

Mr. Ferris proposed to amend section 12 by inserting after the word "thereon," in line 56, the following: "upon the order or judgment of some court of record."

Mr. Russell, of Wood, moved the previous question on the engrossment of the article.

Carried.

Mr. Ferris's amendment lost.

Mr. Waelder's motion to reconsider the vote refusing to adopt Mr. German's amendment providing for the election of an assessor and collector in each organized county, was taken up and lost by the following vote:

YEAS—Abernathy, Ballinger, Blake, Brady, Cooke of San Saba, Cooley, Darnell, Davis of Brazos, Davis of Wharton, Dillard, Dohoney, Erhard, Ferris, Ford, German, Graves, Kilgore, Lockett, Mills, Mitchell, Moore, Morris, Murphy, Munn, Russell of Harrison, Sansom, Waelder, West—28.

NAYS—Allison, Barnett, Blassingame, Bruce, Burleson, Chambers, Crawford, DeMorse, Fleming, Flournoy, Gaither, Holt, Johnson of Collin, Killough, Lacy, Lynch, McCormick, McKinney of Denton, McLean, Martin of Navarro, Martin of Hunt, Norvell, Nugent, Pauli, Ramey, Reagan, Robertson of Bell, Ross, Russell of Wood, Scott, Smith, Spikes, Stayton, Stewart, Stockdale, Wade, Whitehead, Whitfield—38.

Mr. Brown, by leave, withdrew his substitute.

Mr. Martin, of Navarro, offered the following substitute for section 13:

"Sec. 13. There shall be elected by the qualified electors of each county, at the same time and under the same law regulating the election of State and county officers, an assessor of taxes, who shall hold his office for two years, and until his successor is elected and qualified."

Adopted.

Mr. Stewart offered the following amendment:

Amend section 7, lines 35 and 36, strike out the words "paid upon it," and insert "shall be paid to the Comptroller," who shall apportion the same.

Lost.

Mr. McCormick offered the following amendment:

Add after the word "thereon," in line 68, section 14, the following: "And all the property, both real and personal, belonging to any delinquent taxpayer, shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent, and such property may be sold for the payment of

the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.”

Adopted.

The question on the engrossment of the article was then put, and the article engrossed by the following vote:

YEAS—Mr. President, Abernathy, Allison, Arnim, Barnett, Blassingame, Brown, Bruce, Burleson, Chambers, Cooke of San Saba, Darnell, Ferris, Fleming, Flournoy, German, Graves, Holt, Johnson of Collin, Killough, Lacy, Lynch, McCormick, Martin of Navarro, Martin of Hunt, Nugent, Ramey, Ross, Russell of Wood, Sansom, Scott, Spikes, Wade, Whitfield—34.

NAYS—Ballinger, Blake, Brady, Cooley, Crawford, Davis of Brazos, Davis of Wharton, DeMorse, Dillard, Dohoney, Erhard, Ford, Gaither, Kilgore, Lockett, McLean, Mitchell, Moore, Morris, Murphy, Norvell, Nunn, Pauli, Reagan, Robertson of Bell, Russell of Harrison, Smith, Stayton, Stewart, Stockdale, Waelder, West, Whitehead—33.

“Article —, Judicial Department,” taken up.

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

Pending—“Article —, Judicial Department.”

FIFTY-FIRST DAY.

HALL OF REPRESENTATIVES. }
AUSTIN, TEXAS, November 3, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by the Rev. W. H. Dodge, of the Baptist Church, at Austin.

Journal of yesterday read and adopted.

On motion of Mr. Murphy, Mr. Cardis was excused for four days.

Mr. Fleming presented the petition of the citizens of Hamilton county, asking for a local option law.

Referred to Committee on General Provisions.

Mr. Ramey offered the following resolution:

RESOLUTION WITH REGARD TO PRISONS, ETC.

WHEREAS, The barbarities and cruelties practiced on the inmates of the penitentiary have been generally condemned; and

WHEREAS, the plan of scattering the convicts sent to the peni-