

in the counties of Harrison and Smith, which I consider should be called to your attention, for such action as you may deem proper.

My attention has been called to them by applications to me for commissions for persons claiming to have been elected in Harrison county. My information is derived mainly from papers filed in this office, and in the office of the secretary of state, together with such others properly certified which have been presented to me by persons having an interest in the controversy which has grown out of said election.

The election took place in Harrison county on the 5th day of November, 1878. Before the expiration of ten days thereafter, the Hon. J. B. Williamson, then the county judge, was enjoined at the suit of a number of the citizens of said county, by the district judge, then holding a session of the district court in said county, from counting the votes polled at a certain place of voting within said county.

Judge Williamson answered in said suit that he did, on the 18th of said November, open and count the votes, and issue certificates of election in disobedience to the writ of injunction, because if he had not done it he would have placed himself in violation of the criminal law of the State and of the United States. On the twentieth of said month he, as county judge, certified under his hand and the seal of his office to a duplicate copy of the returns of said election, which is now in the secretary of state's office. This return shows the aggregate votes polled for each candidate in the county, and by it said Williamson was re-elected county judge, and those reputed to be on the same ticket with him were also elected, and the Hon. George Lane and those on the ticket with him were not elected.

On the 29th of said November Judge Williamson certified to a list of persons, as those elected to the respective county offices, his name heading the list, which certificate had no seal attached to it, but instead thereof states as follows:

"[L. S.] My office and seal have been taken by force, and hence the seal is not hereto attached.

"J. B. WILLIAMSON,  
"County Judge Harrison County."

If the vote had not been counted at the voting place which Judge Williamson was enjoined from counting, Judge Lane and those on his side would have been shown to have been elected, and therefore he and they claimed to have been elected to office, and by the interposition of the citizens on their behalf, they were put in possession of the respective county offices, as it is said by Judge Williamson, by force. By this it is meant, as I presume, the force of numbers co-operating in aid of Judge Lane and others, against those in office who did not consent to the ejection. Those put into possession of the office filed a contest against those put out in the district court, then in session, and a judgment was rendered by said court in their favor, from which an appeal was taken to the supreme court, which, in the regular course, will come up for trial in Tyler, after the first Monday in October next. The persons in possession of the offices have given no bonds to account for the fees in the event they are finally adjudged not to be entitled to them.

It would seem from papers on file in this office that both parties applied to my predecessor for commissions, and he submitted the matters involved to the then attorney general, and upon his opinion his excellency, Governor R. B. Hubbard, declined to issue commissions to either party,

as it is presumed, because the title to the offices was disputed first and afterwards was contested in the court. Still both parties claim a right to the exercise of the offices—those that are in possession, by virtue of the decision of the district court in their favor, and those that are out of possession, by virtue of Judge Williamson's certificate, they contending that the judgment of the district court, being appealed from, confers no right in opposition to said certificate.

Those claiming under the certificate have applied to me for commissions. I see no occasion under existing circumstances to reverse the action of my predecessor, because a commission is not that which confers a title to the office, but only evidence of it, and is usually issued only when the right is plainly established or is not questioned, and because there may be some doubt as to the right of appeal from the judgment of the district court in the contest for the offices. The action of the executive in giving a commission, or in refusing to give it, cannot possibly aid or affect either party in any way whatever, either as to the possession or as to the right to the offices. I do not propose to do a thing that might be used in aggravation of an angry controversy.

It is not in reference to that matter that your attention is called to these things; but there are considerations of the very gravest import that arise out of these transactions demanding, as I believe, the most serious attention of the Legislature.

Before said election the board of education had sent its order upon the collector of taxes of Harrison county for its portion of the free common school fund, which order is in possession of the person to whom it was then sent, and who is on the side of Judge Williamson, still claiming to be county treasurer, and another person on the side of judge Lane claims to be the elected and acting county treasurer. Mr. William C. Pierce is, without any dispute or controversy, the legally recognized tax collector of Harrison county, having on hand a large amount of said school fund, and declines to pay it over to either one of those two persons who claim to be county treasurer. By this means the teachers of the free common schools cannot be paid for their services. He is anxious to pay over the money, but fears to take the responsibility of determining to whom to pay it, some action, if practicable, should be taken to obviate this great inconvenience.

The writ of injunction restraining Judge Williamson was disobeyed by him and he was not fined or imprisoned for it. His duty, as has often been decided by the highest courts, was merely ministerial, to count the votes legally returned to him by properly authorized returning officers, and give certificates to those thereby appearing to have been elected, and if, in doing that, a person failed to get the certificate who had received a majority of legal votes, he could institute a contest in the district court in which the informality or irregularity in the manner of returning such legal votes might be disregarded and that person declared to be elected who had received the majority of legal votes, which is the main object in holding an election. The interference of the judiciary to control the officers of the election in the discharge of their prescribed duties is a modern innovation, fraught with serious consequences and, as it is believed, dangerous to the rights of the people in the exercise of their free suffrage in elections. I therefore respectfully recommend that a law be passed preventing the issuing of any such writs by the judges of any court in this State. The issuance of this writ of injunction, and

the violation of it doubtless provoked the action of the citizens in their interference to place those in possession of the offices to which they would have been declared elected, if the writ had been obeyed; and such interference by the citizens is another extraordinary feature in the history of elections in this State deserving the attention of the Legislature.

The answer of Judge Williamson that if he had not counted the votes "he would have placed himself in violation of the criminal laws of this State and of the United States," has reference to the laws of the United States contained in the Revised Statutes of the United States in sections 5510, 5515 and 5522, providing for the punishment of returning officers in elections for members of congress, who violate their duties therein as prescribed by the laws of the State or of the United States. There being an election for a representative in congress at the same time and in the same connection with this election for county and state officers, the returning officer, Judge Williamson, became amenable to this law, if he violated it. Its violation is made a misdemeanor. The time of holding election for members of congress is fixed on the first Tuesday after the first Monday in November in every other year, by the twenty-fifth section of the Revised Statutes of the United States. Our election law fixes the same day for the general election for county and state officers. Judge Williamson's apprehensions of a prosecution under the laws referred to were verified by what took place at Tyler in Smith county. There, Benjamin Bass, the acting county judge of Smith county, failed or refused to count the votes polled at one or more places of holding the election, because of some alleged defect in the returns, and thereupon an information was filed against him, for violating the laws of the United States in so doing, in the federal district court then in session at Tyler. He was immediately arrested by the deputy marshal and held to bail in a bond of two thousand dollars to answer said criminal charge. It was currently reported and believed at Tyler that a similar information would be filed against Judge Williamson if he did not count all the votes in the election in Harrison county. In neither county could the counting or not counting of the votes have possibly affected the congressional elections, nor was the court's interference sought in reference to them, but obviously in reference to the election of county officers.

Thus has the federal court been made the instrument of interference in our local elections, subjecting the returning officers to harrassing prosecutions in the federal courts, which may be hundreds of miles distant from the county where the election is held. The situation of Judge Williamson is a good illustration of the danger in which a returning officer of an election may be placed in the discharge of a simple ministerial duty by these practices of the several courts in reference thereto. He was required by the district court of the State not to count certain votes, under the penalty of fine and imprisonment for contempt if he did, and at the same time he knowingly rendered himself liable to a certain prosecution in the federal courts, subjecting him to fine and imprisonment if he did not count the votes. Shall we continue to subject our officers to such a dilemma and our local elections to such interference? I think not, and therefore I respectfully recommend that the biennial election of State and county officers be fixed by a law, passed for that purpose, at a different day than that at which the representatives in Congress are elected.

In reference to the doubt expressed about the right of appeal to the supreme court from the judgment of the district court in these cases of

contest of the election, reference may be had to the case of *Rogers vs. Johns*, (42 Texas R., p. 339) in which it was decided that there was no such appeal from the district to the supreme court, because there was no right of appeal given by the statutes of 1873 under which that case was determined. In the case of *McKinney vs. O'Conner* (25 Texas R.,) the right of such an appeal was maintained because it was expressly given in the statutes under which it was tried. The statutes of 1873 (Gen. Laws, p. 67), in section 2, after providing the manner in which a contest for an office shall be instituted and tried in the district court, says that "such cases shall have precedence over all others." In the act of 1876, amending that section (Gen. Laws, 1876, p. 70), the corresponding clause reads as follows: "Such causes shall have the precedence over all other causes, both in the district court and on appeal in the supreme court." This is the only expression in the original or amended act, and it is only inferential, that can be said to recognize the right of appeal from the district to the supreme court. Whether this will change the course of decisions in the supreme court from that in the last case of *Rogers vs. Johns*, in which the right of appeal is denied, remains to be determined when a case shall arise under the act of 1876.

This question was incidentally referred to in the opinion of the supreme court, as well as in the dissenting opinion, in the case of *ex parte Towles*, reported in 48 Texas Reports, pages 435-6 and 442-3. It is certain, however, that under the amended act of 1876, section 2, cases may arise of a trial in chambers of a contested election by a district judge, as was done lately by Judge John C. Robertson in Smith county, wherein there would be a decision of a case of contested election in which an appeal would not be entertained by the supreme court, for the supreme court has decided that it could not entertain an appeal in a case from a decision of the district court rendered in chambers.

If the decisions of the supreme court are examined from the earliest days down to the present time, it will be found that the laws relating to the contested election, so far as they require any action of the courts, have been and are now shaped so as to engender difficulties and doubts as to the proper mode of construction and of action under them.

I therefore respectfully recommend a careful revision of the existing laws relating to contested elections, in reference to the decisions of the supreme court, and that they be so shaped that the action of the courts in relation thereto may be plainly expressed, and defined in such way as that the courts can perform what is required of them consistently with their powers, according to the jurisdiction conferred upon them by the constitution; and if it be the pleasure of the Legislature that there should be an appeal in such cases from the district to the supreme court, that the right be plainly and expressly conferred by statute, and that such appeal when taken be returnable forthwith to the supreme court, wherever it may be in session, and therein have precedence over all other cases, so that there may be no delay in trying the same.

If such a law should be passed now, being a law relating to the remedy, the parties interested might have the appeal brought up to the supreme court during its present session at Galveston, or Austin, and determine so as to settle the rights of the parties either by trying it or by dismissing it for want of jurisdiction to try it. The great and leading object of laws relating to elections, and to contested elections, is to ascertain the will of the majority of legal voters as expressed at an election,

and unless the laws are plain and full in every particular, and are so shaped that each officer, tribunal and court required to act therein, can constitutionally perform what is required of them, and in the way that it is required, there is no certainty that such leading object will be attained. The principle upon which the democratic republican institutions of this country is based is that the majority shall rule; and if by resort to the courts for their interference, or by the uncertainty or inadaptibility of the laws relating to elections and to contested elections, the will of the majority may be perverted or defeated, the foundations of free government are undermined. The confidence of the people in them will be destroyed, and ultimately force will take the place of peace and order.

The time was when men would scorn to hold an office, knowing that it was contrary to the majority of legal votes cast in the election. But now, in this day of judicial writs and returning boards, even good and honorable men may be found willing to hold office under such circumstances upon the principle that a great good attained justifies the means of attaining it.

In this changed spirit of the times the laws should more carefully and explicitly define all of the means by which the will of the majority should be certainly and speedily ascertained.

O. M. ROBERTS.

Senator Stewart moved that the message of the governor be referred to a special committee of five senators.

Senator Edwards moved to amend the motion of Senator Stewart by adding that 500 copies be printed, which amendment was accepted by Senator Stewart and the motion, as amended, was adopted.

The president appointed on said committee Senators Stewart, Buchanan, Patton, Edwards and Swain.

(President *pro tempore* in the chair).

Senator Guy, chairman of committee on land office, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on general land office, to whom was referred Senate bill No. 134, entitled "An act to require the owner of surveys to pay the patent fee therefor before filing the field notes of the same in the general land office," have had the same under consideration, and I am instructed by said committee to report said bill back to the Senate and to recommend its passage.

GUY, *Chairman.*

Senator Brown, chairman of committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined and find correctly engrossed Senate bill No. 67, entitled "An act prescribing the times of holding the district courts in the twenty-fourth judicial district."

BROWN, *Chairman.*

Senator Stewart, chairman of judiciary committee No. 2, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 177, entitled "An act to prohibit the sale, exchange or gift of

intoxicating liquors within three miles of Frainville high school, in Burleson county," and finding that due notice has been given of the intention to apply for the passage of this act, I am instructed by the committee to report said bill back to the Senate, and to recommend the passage of the same.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on judiciary No. 2 have had under consideration Senate bill No. 172, entitled "An act to amend section 5 of an act entitled 'an act to prohibit the sale, exchange or gift of intoxicating liquors in any county, justice's precinct, city or town in this State that may so elect; prescribing the mode of election and affixing a punishment for its violation, approved June 21, 1876,'" and finding that the end sought to be attained by this bill is provided for in Senate bill No. 182, reported upon favorably by this committee, I am instructed by your committee to report this bill back to the Senate with their recommendation that it do not pass.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 182, entitled "An act amendatory of 'an act to prohibit the sale, exchange or gift of intoxicating liquors in any county, justice's precinct, city or town in this State that may so elect, prescribing the mode of election and affixing a punishment for its violation,' approved June 24, 1876," and I am instructed by said committee to report said bill back to the Senate with their recommendation that it do pass.

STEWART, *Chairman.*

Senator Grace introduced a bill entitled "An act to amend an act entitled 'an act regulating interest,' approved August 21, 1876."

Read by caption and referred to judiciary committee No. 2.

Senator Edwards introduced a bill entitled "An act to amend section 2 of an act to regulate taxation and to fix the rate of the same, passed August 21, 1876."

Read by caption and referred to committee on finance.

Senator Storey (by leave) presented the memorial of the commissioners' court of San Saba county, in the form of a resolution adopted by said court in regular session, "against the using, owning, etc., of a kind of fence that is attempted to be made in said county, styled 'barbed wire fence,' stating that it is dangerous to cattle, killing and causing wounds, and in warm weather causing great injury to stock so wounded, by death from the screw worm;" also stating that a great deal of their county is a grazing country, and as parties are aiming to fence in large tracts of country, the evils herein enumerated will be common and oppressive, and asking for a law against legalizing such fences, with a statement that there is plenty of material in the county for making other kinds of fences.

Referred to committee on judiciary No. 1.

Also, a bill entitled "An act to punish persons for erecting fences in this State made wholly of barbed wire."

Read by caption and referred to judiciary committee No. 1.

Senator Duncan offered the following resolution:

*Resolved,* That the committee on printing be instructed to inquire into and report to the Senate the cause of the delay in the printing and fur-

nishing to this body of the messages of his excellency, the governor, and to secure if possible the more speedy printing and furnishing the same.

Adopted.

Senator Duncan introduced a bill entitled "An act to regulate the practice of medicine, surgery and pharmacy, and to repeal an act entitled 'an act to regulate the practice of medicine,' approved August 21, 1876."

Read by caption and referred to the committee on statistics, public health and history of Texas.

Senator Homan offered the following resolution:

*Resolved*, That it is the sense of the Senate that when Senate bill No. 54, entitled "An act to adopt and establish the Revised Civil Statutes of the State of Texas," is taken up, it should be passed without amendment.

Senator Storey moved to postpone the consideration of the resolution until Senate bill No. 54 (the Civil Code) is taken up.

Senator Martin moved to indefinitely postpone the resolution of Senator Homan and the motion of Senator Storey to postpone, etc.

(President in the chair.)

Senator Terrell moved the previous question upon the pending business before the Senate.

Motion seconded, but the Senate refused to order the main question by the following vote:

YEAS.		
Davenport, Gooch, Homan, Houston,	Moore, Patton, Stewart,	Swain, Terrell, Tilson—10.
NAYS.		
Brown, Buchanan, Burnett, Burton, Duncan, Ford,	Grace, Guy, Hobby, Lane, Lair,	Martin, McCulloch, Ripetoe, Shannon, Storey—16.

Senator Grace moved to recommit the bill to the committee on revision of the code.

Ruled out of order.

The motion of Senator Martin was voted on and lost by the following vote:

YEAS.		
Brown, Duncan, Ford,	Grace, Hobby Martin,	Storey, Tilson -8.
NAYS.		
Buchanan, Burnett, Burton, Davenport, Edwards, Gooch,	Guy, Homan, Houston, Lane, Lair, McCulloch,	Moore, Patton, Stewart, Shannon, Swain, Terrell—18.

Present, not voting—Ripetoe.

Senator Duncan moved the previous question upon Senator Storey's motion, which was seconded, and the main question ordered by the following vote:

## YEAS.

Brown,  
Duncan,  
Davenport,  
Edwards,  
Gooch,  
Grace,  
Guy,

Homan,  
Houston,  
Lane,  
Lair,  
Martin,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Swain,  
Terrell,  
Tilson—21.

## NAYS.

Buchanan,  
Burnett,

Burton,  
Ford,

Hobby,  
Storey—6.

Senator Storey's motion was then adopted by the following vote:

## YEAS.

Brown,  
Burnett,  
Burton,  
Duncan,  
Edwards,  
Ford,  
Grace,

Guy,  
Hobby,  
Lane,  
Lair,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Shannon,  
Storey,  
Swain,  
Tilson—19.

## NAYS.

Buchanan,  
Davenport,  
Gooch,

Homan,  
Houston,  
Martin,

Stewart,  
Terrell—8.

Senator Duncan (by leave) introduced a bill entitled "An act to harmonize the provisions of 'an act to adopt and establish a Penal Code and Code of Criminal Procedure for the State of Texas,' approved ..... day of A. D. 1879, with other laws relating to crime and criminal procedure passed at the same session of the Legislature."

Read by caption and referred to the committee on the revision of the code.

Senator Storey (by leave) introduced a bill entitled "An act for the relief of the heirs of Lieutenant Samuel Wilson, deceased, who fell at Fannin's massacre in 1836."

Read by caption and referred to committee on private land claims.

Senator Guy, chairman of the committee on general land office, by leave, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on general land office, to whom was referred "An act to be entitled 'an act to amend an act to better protect the papers, records and files in the general land office,' approved June 2, 1873," have had the same under consideration, and instruct me to report same with the recommendation that it do pass.

GUY, *Chairman.*

Senator Terrell presented a memorial and accompanying account of Charles Johnson, for work done on the capitol building and grounds in 1875, and material furnished in same year, under contract with Captain Fred Voight, the superintendent of public buildings at that time, and asking an appropriation to pay the same.

Referred to the committee on claims and accounts.

Also (by leave) a bill entitled "An act to amend an act entitled 'an act supplementary to an act of limitation,' approved February 5, 1841."

Read by caption and referred to judiciary committee No. 1.

Senator Grace offered the following resolution:

*Resolved,* That the Senate postpone all special orders and take up Sen-



ate bill No. 54, entitled "An act to establish the Civil Code," and consider the same until disposed of.

Adopted.

Senator Houston (by leave) presented a memorial of numerous citizens of Texas, asking the continuance of frontier protection, giving many reasons for the same of a full and forcible character.

Referred to the committee on Indian affairs and frontier protection.

A message was received from the House announcing the appointment of Messrs. Coleman, Linn and McComb, as a conference committee on the part of the House, to meet Senate committee on the disagreements on House bill No. 141, entitled "An act making appropriation for the support of the State government for the time commencing January 1, 1879, and ending March 1, 1879."

In accordance with resolutions already adopted, postponing special orders, etc., to take up Senate bill No. 54 entitled "An act to establish a Civil Code, etc.," the said bill was taken up and read first time.

Senator Hobby moved to suspend the rules and pass the bill to the second reading.

Passed by the following vote:

YEAS.

Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,

Guy,  
Hobby,  
Homan,  
Houston,  
Lane,  
Lair,  
Martin,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Swain,  
Terrell,  
Tilson—23.

NAYS.

Brown,

McCulloch--2.

The bill was read the second time.

The president, after reading its caption, signed House bill No. 9, entitled "An act making appropriations for the support of the public free schools for the scholastic year ending August 31, 1879."

Senator Storey offered the following amendment:

Amend section 1, article 57, by striking out the words "or by any other person."

Adopted.

Senator Shannon offered the following amendment:

Strike out articles 4039, 4040 and 4041.

Senator Homan made the point of order that his resolution had been postponed till the bill was taken up and is now the first thing in order.

Point of order sustained.

Senator Duncan made a point of order that the adoption of Senator Grace's resolution postponing all special orders, etc., and to take up the pending bill and consider it until disposed of, made the resolution out of order.

Point of order sustained and Senator Homan's resolution ruled out of order.

Senator Terrell was granted leave of absence until to-morrow morning.

Senator Swain moved the previous question upon the bill and amendments.

Senator Duncan made the point of order that the constitution requires that a bill should be read upon three several days and free discussion

allowed thereon, and therefore the motion of Senator Swain was out of order.

Point of order not sustained.

A message was received from the House announcing the passage by that body of Senate bill No. 132, entitled "An act to legalize and make valid the acts of E. T. Walker, county judge of Stephens county, as commissioner to dispose of the real estate belonging to said county."

Senator Swain's motion for the previous question was seconded, but the Senate refused to order the main question by the following vote:

## YEAS.

Buchanan,  
Davenport,  
Edwards,

Gooch,  
Houston,

Patton,  
Swain—7.

## NAYS.

Brown,  
Burnett,  
Burton,  
Duncan,  
Ford,  
Grace,

Guy,  
Hobby,  
Homan,  
Lair,  
Martin,  
McCulloch,

Moore,  
Ripetoe,  
Shannon,  
Stewart,  
Storey,  
Tilson—18.

Present, not voting—Lane.

Senator Duncan moved that the Senate go into committee of the whole on the consideration of this bill.

Senator Grace moved a call of the Senate.

Call not sustained.

The motion of Senator Duncan to go into committee of the whole on the pending bill was lost by the following vote:

## YEAS.

Brown,  
Duncan,

Grace,  
Lair,

Patton—5.

## NAYS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Homan,  
Houston,  
Martin,  
McCulloch,  
Moore,

Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Tilson—20.

Senator Duncan moved to indefinitely postpone the consideration of the bill and pending amendment.

Senator Edwards moved to lay this motion on the table.

Carried by the following vote:

## NAYS.

Burnett,  
Burton,  
Davenport,  
Edwards,  
Gooch,  
Grace,  
Guy,

Hobby,  
Homan,  
Houston,  
Lair,  
Martin,  
McCulloch,  
Moore,

Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Tilson—20.

## NAYS.

Brown,

Duncan—2.

Present, not voting—Buchanan, Ford, Lane, Patton.

Senator Duncan moved to postpone the consideration of the bill and amendment till this day week.

Senator Edwards made the point of order that another motion to postpone was not in order, as his previous motion to postpone had just been acted upon.

The point of order was sustained.

Senator Swain moved to lay the motion of Senator Shannon on the table.

Lost by the following vote:

YEAS.		
Buchanan, Davenport, Edwards, Gooch,	Hobby, Houston, Lane, McCulloch.	Moore, Patton, Swain—11.
NAYS.		
Brown, Burnett, Burton, Duncan, Grace,	Guy, Homan, Lair, Martin, Ripetoe,	Shannon, Stewart, Storey, Tilson—14.

Senator Shannon moved to adjourn until 3 o'clock P. M.

Lost by the following vote:

YEAS.		
Burnett, Duncan, Houston,	McCulloch, Moore, Stewart,	Shannon, Swain, Tilson—9.
NAYS.		
Brown, Buchanan, Burton, Davenport, Edwards,	Gooch, Grace, Guy, Homan, Lane,	Lair, Martin, Patton, Ripetoe, Storey—15.

Present and not voting—Ford and Hobby.

Senator McCulloch moved to adjourn until 10 o'clock to-morrow morning.

Senator Davenport made the point of order that as there had been no intervening business since the last motion to adjourn was acted on, the motion was out of order.

Point of order sustained.

Senator Edwards, from the free conference committee, appointed on the disagreement of the Senate and House on amendment to Senate bill No. 20, entitled "An act to establish a Penal Code and Code of Criminal Procedure for the State," submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee of free conference, appointed to act with a like committee on the part of the House, have had under consideration Senate bill No. 20, and beg leave to report that they have agreed upon the accompanying amendments, which they recommend be adopted.

PEYTON F. EDWARDS,  
CHAS. STEWART,  
L. J. STOREY,

*Senate Committee.*

GEO. P. FINLAY,  
SAM. R. FROST,  
F. L. JOHNSTON,

*House Committee.*

That the Senate recede from its refusal to concur in House amendment striking out article 758a of the Penal Code and do now concur in said amendment.

Amend article 186 of the Penal Code by a substitute to read as follows:

Article 186. Any merchant, grocer or dealer in wares and merchandise, or trader in any lawful business whatsoever, who shall sell or barter, on Sunday, between the hours of 9 o'clock A. M. and 4 o'clock P. M., shall be fined not less than one, nor more than fifty dollars.

Add to section 3:

"*Provided*, that any law passed by the Sixteenth Legislature, in conflict with any provision of this act, shall be the law of the State, this act to the contrary, notwithstanding."

Senator Brown moved that the Senate adjourn until 7:30 to-night.

Carried, and the Senate adjourned.

### NIGHT SESSION.

The Senate met pursuant to adjournment; president in the chair. Roll called; quorum present.

A report made by Senator Houston, chairman of the committee on state affairs, submitted this morning, and inadvertently left out of the journals of the session of to-day:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration the petition of citizens of Waller, Fort Bend and Austin counties in regard to the Sunday law, and have instructed me to report the same back to the Senate with the statement, as the conclusion of your committee, that the Penal Code recently enacted by the Legislature of Texas provides, as far as they deem it expedient to do so, a remedy for the evil complained of by petitioners.

Houston, *Chairman.*

On motion of Senator Ripetoe, Senator Homan was added to the special committee on the governor's message appointed to-day.

The pending question on adjournment to-day was the amendment of Senator Shannon to the pending bill, Senate bill No. 54, entitled "An act to adopt and establish the Revised Civil Statutes of the State of Texas."

Senator Davenport moved the previous question on the pending amendment and the bill.

Senator Duncan moved a call of the Senate.

Call sustained; roll called.

Absent—Senators Burton, Ford and Swain.

On motion of Senator Edwards the call was suspended.

Senator Brown moved to adjourn till 10 o'clock to-morrow morning.

Senator Duncan moved to adjourn until 9 o'clock to-morrow morning.

Senator Brown's motion to adjourn was lost by the following vote:

YEAS—Brown.

NAYS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,

Edwards,  
Gooch,  
Grace,  
Guy,  
Hobby,

Homan,  
Houston,  
Lane,  
Lair,  
Martin,

McCulloch,  
Moore,  
Patton,

Ripetoe,  
Stewart,  
Shannon,

Storey,  
Terrell,  
Tilson—24.

Not voting—Ford, Swain.

Senator Duncan's motion to adjourn ruled out of order.

Senator Davenport's motion for the previous question was seconded and the main question ordered by the following vote:

## YEAS.

Buchanan,  
Davenport,  
Edwards,  
Gooch,  
Hobby,

Houston,  
Homan,  
Lane,  
Lair,  
McCulloch,

Moore,  
Patton,  
Stewart,  
Terrell,  
Tilson—15.

## NAYS.

Brown,  
Burnett,  
Burton,  
Duncan,

Grace,  
Guy,  
Martin,

Ripetoe,  
Shannon,  
Storey—10.

Not voting—Ford, Swain.

Senator Shannon's amendment was then voted on and lost.

The bill was then ordered engrossed by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Davenport,  
Edwards,  
Gooch,  
Hobby,

Homan,  
Houston,  
Lane,  
Lair,  
McCulloch,  
Moore,

Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—17.

## NAYS.

Brown,  
Burton,  
Duncan,

Grace,  
Guy,  
Martin,

Patton,  
Ripetoe,  
Shannon—9.

Senator Terrell moved to postpone the rules and place the bill on its third reading.

Carried by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Davenport,  
Edwards,  
Gooch,  
Guy,  
Hobby,

Homan,  
Houston,  
Lane,  
Lair,  
Martin,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—21.

## NAYS.

Brown,  
Burton,

Duncan,  
Grace,

Shannon—5.

The bill was read the third time.

Senator Burton offered the following amendment:

Page 14, strike out section 28.

Lost.

Senator Burton offered the following amendment:

Page 728, section 22, insert in the blank "the first day of July."

Senator Houston offered a substitute for the amendment of Senator Burnett.

The substitute was voted on and lost.

The amendment of Senator Burnett was then lost.

(Senator Edwards in the chair.)

Senator Grace offered the following amendment:

Amend by striking out all after the word "defendant" in article 3324, page 492.

Senator Houston moved the previous question on the amendment of Senator Grace.

Motion seconded and the main question ordered.

Senator Grace's amendment was then lost.

Senator Grace offered the following amendment:

Amend 3274, strike out after the word "present," sixth and seventh line, page 485.

Lost by the following vote, it taking two-thirds to adopt:

YEAS.

Brown,  
Burnett,  
Duncan,  
Ford,  
Grace,  
Guy,

Hobby,  
Lane,  
Lair,  
Martin,  
McCulloch,  
Moore,

Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Tilson—17.

NAYS.

Buchanan,  
Davenport,  
Edwards,  
Gooch,

Homan,  
Houston,  
Ledbetter.

Patton,  
Swain,  
Terrell—10.

Senator Gooch offered the following amendment:

Add to the "final title" as section 23—Because this bill cannot be read in one day or on three several days, an imperative public necessity exists, requiring that the constitutional rule, that the same be read on three several days, should be suspended, it is therefore suspended.

Adopted.

Senator Houston offered the following amendment:

Amend final title, section 22, by filling the blanks by inserting in first, the word "first," and in second blank the word "September."

Senator Houston moved the previous question upon his amendment, which was seconded and the main question ordered.

Senator Houston's amendment was adopted.

Senator Duncan offered the following amendment:

Amend article 2300 by inserting in the third line, after the word "bound," these words: "in double the amount of the value of the property levied on."

Lost.

Senator Ripetoe offered the following amendment:

Strike out article 2843, page 418.

Lost.

Senator Duncan offered the following amendment:

Strike out sub-division 10, of article 2335, page 347.

(President in the chair.)

Senator Duncan's amendment was lost by the following vote:

YEAS.

Duncan,

Stewart,

Shannon—3.

NAYS.

Brown,  
Buchanan,  
Burnett,  
Burton,

Davenport,  
Edwards,  
Ford,  
Gooch,

Grace,  
Guy,  
Hobby,  
Homan,

Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,

McCulloch,  
Moore,  
Patton,  
Ripetoe,

Storey,  
Swain,  
Terrell,  
Tilson--25.

The bill was then passed by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Davenport,  
Edwards,  
Ford,  
Gooch,  
Guy,

Hobby,  
Homan,  
Houston,  
Lane,  
Lair,  
Ledbetter,

Moore,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson--19.

## NAYS.

Brown,  
Burton,  
Duncan,

Grace,  
Martin,  
McCulloch,

Patton,  
Ripetoe,  
Shannon--9.

On motion of Senator Storey, the Senate adjourned until to-morrow morning at 10 o'clock.

## THIRTY-SECOND DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 19, 1879. }

The Senate met pursuant to adjournment; president in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Burton, the reading of the journals of yesterday was dispensed with and the same adopted.

On motion of Senator Homan, the postmaster was excused for the day.

On motion of Senator Buchanan, Senator Martin was added to the committee on retrenchment and reform.

The president, after reading its caption, signed Senate bill No. 132, entitled "An act to legalize and make valid the acts of E. L. Walker, county judge of Stephens county, as commissioner to dispose of the real estate belonging to said county."

Senator Terrell introduced a bill entitled "An act to validate certain land certificates issued on bounty land warrants to John Steele, William S. Williamson, Robert Middleton, John Scully and Richard Eggleston."

Read by caption and referred to the committee on private land claims.

On motion of Senator Houston, the special orders were postponed and Senate bill No. 21, entitled "An act to provide for designating and surveying 3,050,000 acres of the unappropriated public domain for the erection of a new state capitol and other necessary public buildings at the seat of government," was taken up.

Senator Stewart moved that the Senate concur in House amendments to said bill (Senate bill No. 21.)

Carried by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Gooch,  
Hobby,  
Homan,

Houston,  
Lane,  
Lair,  
Ledbetter,  
McCulloch,  
Moore,  
Patton,

Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson--21.

## NAYS.

Brown,  
Edwards,

Guy,

Martin—4.

Not voting—Burton, Ford, Grace.

The special order being Senate bill No. 96, entitled "An act for the disposal of the public free school lands and to secure the proceeds thereof for the benefit of said schools," was taken up and read third time.

Senator Homan offered the following amendment:

In section 3, page 1, strike out the words "fifty cents" in line nine and insert "one dollar and twenty-five cents," and strike out in line ten all after the word "acre" where it first occurs.

Amendment lost by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,Duncan,  
Homan,  
Patton,Ripetoe,  
Swain—8.

## NAYS.

Brown,  
Davenport,  
Edwards,  
Gooch,  
Grace,  
Guy,Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,McCulloch,  
Moore,  
Shannon,  
Stewart,  
Storey,  
Tilson—18.

Not voting—Ford, Terrell.

Senator Swain offered the following amendment:

Section 9, in last line, strike out "available school fund" and insert in lieu thereof "general revenue of the State."

Lost by the following vote:

## YEAS.

Brown,  
Grace,  
Martin,Shannon,  
Storey,  
Swain,Terrell,  
Tilson—8.

## NAYS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Gooch,Guy,  
Hobby,  
Homan,  
Houston,  
Lane,  
Lair,Ledbetter,  
McCulloch,  
Moore,  
Patton,  
Ripetoe,  
Stewart—19.

Senator Gooch offered the following amendment:

Add to section 3, after the last word, "the governor may authorize pasture land to be leased for a term not longer than twenty years at not less than four cents an acre, nor in less quantities than a section."

Senator Storey offered the following amendment to the amendment of Senator Gooch:

Strike out "four cents" and insert "ten cents" in lieu thereof.

Accepted by Senator Gooch, and the amendment of Senator Gooch, as amended by the amendment of Senator Storey, was voted on and lost by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,Gooch,  
Hobby,  
Homan,  
Patton,  
Ripetoe,Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—15.



## NAYS.

Brown,  
Edwards,  
Grace,  
Guy,

Houston,  
Lane,  
Lair,  
Ledbetter,

McCulloch,  
Moore,  
Stewart—11.

Not voting—Ford, Martin.

The bill was then passed by the following vote:

## YEAS.

Davenport,  
Edwards,  
Gooch,  
Grace,  
Guy,  
Hobby,

Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,

McCulloch,  
Moore,  
Stewart,  
Shannon,  
Storey—16.

## NAYS.

Brown,  
Buchanan,  
Burnett,  
Burton,

Duncan,  
Homan,  
Patton,  
Ripetoe,

Swain,  
Terrell,  
Tilson—11.

Not voting—Ford.

Senator Duncan presented the following protest to be entered on the journals in connection with the passage of this bill:

"I desire, in voting in the negative upon the passage of this bill, to have my reasons therefor spread upon the records, because I deem the measure one of such vast importance that the action taken thereon at this hour will be reviewed for all time to come with either strong approbation or condemnation. I then enter this solemn protest against this bill becoming a law:

1. Because now is not the time to sell our school lands in large bodies, values being so shrunken that a return to good times and sufficient circulating medium for the demands of trade would immeasurably appreciate the value of the land as measured by a dollar.

2. The terms of the bill are such that 18,000,000 acres of our territory will immediately go into the hands of capitalists and corporations who own contiguous lands of a like area, thus for a time barring out the actual settler and subverting the letter and spirit of the constitution by offering a premium to monopoly and discouraging immigration.

3. It is expected under its provisions to sell the lands to capitalists who will be led to invest in it only because they will have a certainty of realizing a better profit by a resale to actual settlers than can be found by investing elsewhere. I think that the actual settler who produces value from the soil pays the debt after all; then why cannot the State sell to the actual settler and thus save the profits of the capitalists.

4. The increase in the price of these lands for the past five years has been more than five times the amount which could have been realized from the value of the lands five years ago invested in any bonded security, as is proposed to invest the proceeds now, and this in the face of an unparalleled scarcity of money and its consequent high value, and there is every reason to believe that the increase of the value of the lands in the immediate years to come will be far above that of the past.

5. Under the law as it now exists there was sold nearly a half million dollars worth of the land last year at one dollar and a half an acre, nine-tenths of which, remaining unpaid, draws securely ten per cent. interest, or as much as an invested capital of one million in four per cent. bonds, whereas it is provided by this bill that the minimum price

of the lands be fifty cents and one dollar per acre, and experience shows that every acre of it will be sold at the minimum should this bill pass. The existing law fixes the minimum at \$1 50 per acre, and the sales under it increase rapidly each year, though it is nearly all returned at the minimum price.

6. The fund to be derived for the available school fund each year from the proposed sale would be but about one dollar at most for each child of scholastic age in this State, whereas if the lands were held until their price reached \$2 or \$3 per acre, it would furnish an invested fund which would yield enough to send each child in the State to school four months in the year; and if we waste the lands now the time will come when the half of the general revenue will not support the public schools.

7. There is great danger in converting these permanent lands into bonds, which have, at best, a fluctuating value and are, in these days of wild ideas, subject to covert if not open repudiation, the fate of eight millions of school bonds in Texas, which are now classed as "debts of doubtful validity," proving that the "sacred school fund" is not the "holy thing" friends of this bill would have us believe.

8. The commissions to be paid to agents to sell this land is out of all reason, being, at an average price for land, not less than a quarter of a million dollars.

9. The provision in the bill that the taxes on the land forever, as well as school lands heretofore sold, shall be diverted from the general revenue and devoted to school purposes, I believe to be obnoxious to more than one clause of the state constitution, and would impose upon the people who pay taxes on little or no land originally of the school domain, the burden of paying for the government and protection of those who occupy school lands, who, though they may be said to get it back in the shape of school money, do not want it in that way, but to supply gaping deficiencies in the general revenue which will be made wider by this subversion.

10. I believe that the passage of the bill is wished for by the enemies of the public free school system, which portends no good to that system and its means of support.

11. I believe that if the necessity exists for disposing of the lands that it can best be done by amending the existing law so as to increase the number of acres which may be purchased by a settler, from 160 to 640, and by placing the minimum for arable lands at \$2 and for pasture lands \$1 50, with a reduction of interest to 8 per cent.

12. The bill provides for a half dozen unbonded agents whose pay depends upon quick sales at the lowest prices.

DUNCAN.

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined and report correctly engrossed Senate bill No. 54, entitled "An act to adopt and establish the Revised Statutes of the State of Texas."

BROWN, Chairman.

Senator Grace, chairman of the committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and find

correctly enrolled and properly signed Senate bill No. 132, "An act to legalize and make valid the acts of E. L. Walker, county judge of Stephens county, as commissioner to dispose of the real estate belonging to said county," and presented the same to the governor for his signature at 10:07 A. M. this day.

GRACE, *Chairman*.

On motion of Senator Edwards, the report of the conference committee on the differences of the Senate and House on Senate bill No. 20, entitled "An act to establish a Penal Code and a Code of Criminal Procedure for the State of Texas," was taken up as a privileged question.

Senator Gooch moved to recommit.

Senator Edwards made the point of order that no motion regarding the report was in order except to adopt or reject.

Point of order sustained.

Senator Duncan made the point of order that action upon the report was action upon the bill, and could not properly be had without a suspension of the rules.

Overruled.

Senator Gooch made the following point of order:

*Mr. President*—The conference committee appointed to confer on the amendment of the House to article 758a of the Penal Code have reported that the Senate recedes from its refusal to concur therein, which was the only question before them; but they have considered other parts of the bill, and I raise the point of order that the part of the report not relating to the amendment about which there was a disagreement, is not properly before the Senate.

The president made the following ruling on the point of order raised by Senator Gooch:

"The chair decides that the question submitted by the senator from Anderson is a matter within the control of the Senate and does not address itself to the chair."

Senator Gooch called for a division of the question.

Senator Edwards made the point of order "that the report of a conference committee is not divisible."

Point of order sustained.

Senator Swain moved to reject that part of the report which affects the part already agreed upon by the two houses.

Senator Edwards again made the point of order that the report of the free conference committee is not divisible, and must be acted upon as a whole, and that the motion of Senator Swain, in effect, was a division of the question.

Point of order sustained.

Senator Gooch moved to discharge the committee on free conference and refer the matter of disagreement to another conference committee.

Ruled out of order.

Senator Brown offered the following resolution:

*Resolved*, That the Senate disagree to the report of the committee of free conference on Senate bill No. 20, and ask that another committee of free conference be appointed by the president of the Senate to act with a like committee on the part of the House.

Senator Patton moved to lay Senator Brown's motion upon the table.

Senator Duncan moved a call of the house.

Call sustained.

Roll called. Absent—Grace.

Senator Guy moved to adjourn until 10 A. M. to-morrow.  
 Withdrawn, and Senator Grace appearing, the call was suspended.  
 Senator Duncan moved to adjourn until 9 A. M. to-morrow.  
 Lost by the following vote:

YEAS.		
Buchanan, Davenport, Duncan,	Gooch, Lair,	Moore, Tilson—7.
NAYS.		
Brown, Burnett, Burton, Edwards, Ford, Grace, Guy,	Hobby, Homan, Houston, Lane, Ledbetter, Martin, McCulloch,	Patton, Shannon, Stewart, Storey, Swain, Terrell—20.

Not voting—Ripetoe.

Senator Edwards moved the previous question upon Senator Brown's motion.

Motion seconded and the main question ordered by the following vote:

YEAS.		
Brown, Burnett, Burton, Davenport, Duncan, Edwards, Gooch, Grace, Guy,	Hobby, Homan, Houston, Lane, Lair, Ledbetter, Martin, McCulloch, Moore,	Patton, Ripetoe, Shannon, Stewart, Storey, Swain, Terrell, Tilson—26.
NAYS—Buchanan.		

Senator Patton's motion to lay Senator Brown's motion upon the table carried by the following vote:

YEAS.		
Burnett, Burton, Davenport, Edwards, Ford,	Hobby, Houston, Lane, Ledbetter, Patton,	Ripetoe, Stewart, Storey, Swain, Terrell—15.
NAYS.		
Brown, Buchanan, Duncan, Gooch, Grace,	Guy, Homan, Lair, Martin,	McCulloch, Moore, Shannon, Tilson—13.

Senator Burton moved to reconsider the vote just taken.

Senator Terrell moved to lay the motion to reconsider on the table, the vote on which motion resulted as follows:

YEAS.		
Burnett, Davenport, Edwards, Ford, Hobby,	Houston, Ledbetter, Martin, Patton, Ripetoe,	Stewart, Shannon, Storey, Terrell—14.
NAYS.		
Brown, Buchanan,	Burton, Duncan,	Gooch, Grace,

Guy,  
Homan,  
Lane,

Lair,  
McCulloch,  
Moore,

Swain,  
Tilson—14.

There being a tie vote, the president voted in the affirmative and declared the motion to reconsider laid on the table.

Senator Ledbetter moved to adopt the report of the committee on free conference, and then moved the previous question on this motion.

The latter motion was seconded, and the main question not ordered by the following vote:

YEAS.

Burnett,  
Davenport,  
Edwards,  
Ford,  
Hobby,

Houston,  
Lane,  
Ledbetter,  
Patton,

Shannon,  
Stewart,  
Storey,  
Terrell—13.

NAYS.

Brown,  
Buchanan,  
Burton,  
Duncan,  
Gooch,

Grace,  
Guy,  
Homan,  
Lair,  
Martin,

McCulloch,  
Moore,  
Ripetoe,  
Swain  
Tilson—15.

Senator Grace moved to adjourn until 9:30 A. M. to-morrow.  
Lost by the following vote:

YEAS.

Buchanan,  
Burnett,  
Burton,  
Duncan,

Gooch,  
Grace,  
Lair,  
McCulloch,

Ripetoe,  
Swain,  
Tilson—11.

NAYS.

Brown,  
Davenport,  
Edwards,  
Ford,  
Guy,  
Hobby,

Homan,  
Houston,  
Lane,  
Ledbetter,  
Martin,  
Moore,

Patton,  
Shannon,  
Stewart,  
Storey,  
Terrell—17.

Senator Buchanan moved the previous question upon Senator Ledbet-  
ter's motion.

Senator Duncan moved a call of the Senate.

Call sustained.

Roll called; absent—Guy.

Senator Edwards moved to excuse Senator Guy.

Carried by the following vote:

YEAS.

Brown,  
Burton,  
Davenport,  
Edwards,  
Ford,  
Hobby,  
Homan,  
Houston,

Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Patton,

Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—22.

NAYS.

Buchanan,  
Absent, not voting—Burnett, Gooch.

Duncan,

Grace—3.

Senator Duncan moved to adjourn until to-morrow morning at 10  
o'clock.

Ruled out of order.

Senator Buchanan's motion for the previous question was seconded and the main question ordered by the following vote:

## YEAS.

Brown,  
Buchanan,  
Davenport,  
Edwards,  
Ford,  
Gooch,  
Hobby,

Homan,  
Houston,  
Lane,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Patton,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—21.

## NAYS.

Burnett,  
Burton,

Duncan,  
Grace,

Lair,  
Ripetoe—6.

Senator Ledbetter's motion to adopt the report of the free conference committee was lost by the following vote:

## YEAS.

Brown,  
Davenport,  
Edwards,  
Ford,  
Hobby,

Houston,  
Lane,  
Ledbetter,  
Patton,

Stewart,  
Shannon,  
Storey,  
Terrell—13.

## NAYS.

Buchanan,  
Burnett,  
Burton,  
Duncan,  
Gooch,

Grace,  
Homan,  
Lair,  
McCulloch,

Moore,  
Ripetoe,  
Swain,  
Tilson—13.

Senator Houston presented the following explanation of his vote, and to be entered on the journals:

"I vote for the report of the committee as being an improvement on the House amendment to the Code as concurred in heretofore, although I am opposed to regulating the observance of the Sabbath by legislative act."

Senator Patton (by leave) introduced a bill entitled "An act to provide for the taking and preservation of testimony in capital cases, and the use of the testimony so taken in cases of appeal."

Read by caption and referred to judiciary committee No. 2.

Senator Gooch entered a motion to reconsider the vote just taken rejecting the free conference report of the committee on the difference of the two houses on Senate bill No. 20, entitled "An act to establish a Penal Code and Code of Criminal Procedure for the State."

Senator Storey, chairman of committee on finance (by leave) submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred Senate bill No. 194, entitled "An act to amend 'an act to regulate taxation and to fix the rate of the same,'" passed August 21, 1876, have carefully considered the same, and I am instructed by a majority of the committee present to report the bill back to the Senate with the recommendation that it pass.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

The senate committee on finance have had under consideration House bill No. 217, entitled "An act to release certain inhabitants in the county

of Lamar, in this State, from the payment of taxes assessed and now due for the year 1878, in consequence of a great public calamity," and I am instructed by the committee to return the bill to the Senate with an unfavorable recommendation for the following, among other reasons:

1. It is believed to be a local law, such as is forbidden by section 57, article 3, of the constitution, unless notice of the application for relief is published for thirty days in the locality where the parties live, before the bill is introduced into the Legislature. No evidence of any such publication accompanies this bill.

2. The calamity referred to in the preamble of the bill is not underestimated by the committee, but if relief is to be granted in such cases, then the committee believe that a number of the citizens of Comal county, Refugio county, a great portion of the citizens of Lockhart, Caldwell county, and the citizens of numerous other localities should be included in the bill.

3. That owing to the financial condition of the State, with a deficit in the revenues aggregating since the adoption of the new constitution of nearly \$700,000, it is believed to be unwise to grant the relief prayed for. The committee therefore recommend that the bill do not pass.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance have had under consideration the memorial of Mrs. Clemence Toby, together with the itemized accounts of Thomas Toby against the State of Texas for the amount of \$63,451 62, as furnished in the report of Stephen H. Darden, comptroller, and A. J. Dorn, treasurer. Your committee believe that the said claim, to the amount of \$45,000, is just, due and meritorious, and that, so far as they have been able to ascertain, has never been paid. Your committee would therefore recommend that the said petition of Mrs. Clemence Toby, to the amount of \$45,000 and no more, be allowed in full payment of said claim.

STOREY, *Chairman.*

On motion of Senator Swain, the Senate adjourned until 10 o'clock to-morrow morning.

### THIRTY-THIRD DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 20, 1879. }

The Senate met pursuant to adjournment; president *pro tem.* in the chair. Roll called; quorum present. Prayer by chaplain.

On motion of Senator Ripetoe, the reading of the journals of yesterday was dispensed with and the same adopted.

On motion of Senator Davenport, Senator Homan was excused for a week.

On motion of Senator Grace, Senators Terrell, Gooch and Lane were excused as being engaged in necessary committee duty.

Senator Buchanan, chairman of the committee on federal relations, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on Federal relations, to whom was referred that portion of his excellency Gov. Hubbard's message pertaining to an indebtedness by the United States government to the State of Texas, on account

of expenditures by the State of Texas for frontier protection, have had the same under consideration, and I am instructed to report the same back with the statement that the demands of that message are complied with by House joint resolution No. 27, and therefore it is not necessary to further consider the same.

BUCHANAN, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on federal relations have had under consideration Senate joint resolution No. 45, instructing our senators and requesting our representatives in Congress to ask for protection to the Texas frontier, and compensation for past expenses by the State in that behalf; and I am instructed to report the same back with the statement that the objects of this resolution are fully met by House joint resolution No. 27, and for that reason need not be further considered.

BUCHANAN, *Chairman.*

Senator Storey, chairman of committee on finance, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred Senate bill No. 75, entitled "An act to set aside the available school fund remaining on hand for the fiscal year ending August 31, 1879," having duly considered the same hereby return it to the Senate.

Your committee believe that the object of said bill is fully provided for in House bill No. 141, entitled "An act to make appropriation for the support of the state government for the time beginning January 1, 1879, and ending February 28, 1879."

STOREY, *Chairman.*

A message was received from the House announcing the passage by that body of Senate bill No. 67, entitled "An act prescribing the times of holding the courts in the twenty-fourth judicial district." House bill No. 255, entitled "An act to reorganize the fourth judicial district of the State of Texas, and to fix the time for holding courts in the different counties composing same;" and that the House refuses to adopt the report of the committee of free conference on Senate bill No. 20, re-refers the matter back to the committee with instructions to the committee on the part of the House to consider only the matter of disagreement between the two houses; and upon Mr. Finlay declining to further serve upon said committee, the speaker appointed Mr. Gause in his stead.

Senator McCulloch, chairman of the committee on statistics of industry, public health and history of Texas, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on statistics of industry, public health and history of Texas, to whom was referred Senate bill No. 196, entitled "An act to regulate the practice of medicine, surgery and pharmacy, and repeal an act entitled 'an act regulate the practice of medicine,' approved August 31, 1876, and all other laws in conflict therewith," have had the same under consideration, and I am instructed to report the same back and recommend that it do pass.

MCCULLOCH, *Chairman.*

Senator Edwards, from judiciary committee No. 1, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1, to which was referred Senate bill No.



159, entitled "An act to prescribe the requisites of indictments in certain cases," have considered the same, and instruct me to report it back and recommend its passage.

EDWARDS, *for Committee.*

Senator Burton offered the following resolution:

*Resolved,* That the committee on education is instructed to inquire into the practicability of the State establishing a manual school in connection with the agricultural and mechanical college for colored youths, whereby students at said college may be enabled to pay all or part of their tuition and other expenses by labor on the farm, and report by bill or otherwise.

Adopted.

On motion of Senator McCulloch, 100 copies of Senate bill No. 196, entitled "An act to regulate the practice of medicine, surgery and pharmacy, and to repeal an act entitled 'an act to regulate the practice of medicine,'" approved August 31, 1876, and all other laws in conflict herewith, were ordered printed.

On motion of Senator McCulloch, the rules were suspended, special order postponed, and House bill No. 255, entitled "An act to reorganize the fourth judicial district of the State of Texas and to fix the times for holding courts in the different counties composing same," was taken up and read first time.

Senator McCulloch moved to suspend the rules and place the bill on its second reading.

Withdrawn by request.

On motion of Senator Shannon, the special orders were postponed, rules suspended and Senate bill No. 176, entitled "An act to establish the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, providing the times of holding the courts therein and providing for the election of district judges for the twenty-eighth, twenty-ninth and thirtieth districts," was taken up and read first time.

Senator Shannon moved to suspend the rules and place the bill on its second reading.

Carried by the following vote:

	YEAS.	
Brown,	Guy,	Moore,
Buchanan,	Hobby,	Patton,
Burnett,	Houston,	Ripetoe,
Burton,	Lane,	Stewart,
Davenport,	Lair,	Shannon,
Duncan,	Ledbetter,	Storey,
Ford,	Martin,	Swain,
Gooch,	McCulloch,	Tilson—25.
Grace,		

NAYS—none.

Not voting—Edwards, Terrell.

Bill read second time.

The amendments recommended by the committee were adopted.

Senator Terrell from the conference committee on House bill No. 141, entitled "An act making appropriations for support of the state government for the time beginning January 1, 1879, and ending March 1, 1879," submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

The conference committee to whom was referred House bill No. 141,

entitled "An act making appropriations for the support of the state government for the time beginning January 1, A. D. 1879, and ending March 1, A. D. 1879," have considered the disagreement of the Senate and the House thereon and have agreed to and do recommend as follows:

1. That the Senate do recede from its amendments inserting \$236, instead of \$166 66, for bailiff.

2. That the Senate do recede from its amendment striking out the proviso in the item for librarian for supreme court and court of appeals.

3. That the Senate do adhere to the following amendment: "For contingent fund for supreme and appellate courts, \$50."

4. That the Senate do adhere to its amendment striking out "for support of lunatic asylum, \$10,000."

5. That the Senate do recede from its amendment, viz: "costs to be paid sheriffs, clerks and county attorneys in district, county and justice courts, \$12,000."

TERRELL,  
LANE,  
GOOCH,

*On part of Senate.*

COLEMAN,  
MCCOMB,  
LINN,

*On part of House.*

Senator Terrell moved to adopt the report of the committee.

Senator Grace made the following motion:

Strike out "for librarian at Galveston."

Ruled out of order.

On motion of Senator Grace, the amendments or recommendations of the committee were acted on *seriatim*.

The first recommendation of the committee was adopted.

Second recommendation of committee adopted by the following vote:

YEAS.

Davenport,  
Ford,  
Gooch,  
Guy,  
Hobby,

Houston,  
Lane,  
Ledbetter,  
McCulloch,  
Moore,

Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell -15.

NAYS.

Brown,  
Buchanan,  
Burnett,  
Duncan,

Edwards,  
Grace,  
Lair,  
Martin,

Patton,  
Ripetoe,  
Tilson—11.

Not voting—Burton.

The third amendment or recommendation of committee was adopted.

The fourth recommendation of the committee was adopted.

The fifth recommendation of the committee was lost by the following vote:

YEAS.

Brown,  
Davenport,  
Edwards,  
Gooch,

Hobby,  
Lane,  
Moore,

Storey,  
Terrell,  
Tilson—10.

NAYS.

Buchanan,  
Burton,  
Burnett,

Duncan,  
Ford,  
Grace,

Guy,  
Houston,  
Lair,

Ledbetter,  
Martin,

McCulloch,  
Patton,

Ripetoe,  
Shannon—15.

Not voting—Stewart, Swain.

The consideration of Senate bill No. 176, was resumed.

Senator Davenport offered the following amendment to the bill: Substitute for section 12:

“Section 12. That the district courts in the counties composing the thirtieth judicial district shall be holden as follows: In the county of Palo Pinto, on the first Mondays in March, July and November, and may continue in session two weeks. In the county of Hood, on the second Mondays after the first Mondays in March, July and November, and may continue in session two weeks. In the county of Somervell, on the fourth Mondays after the first Mondays in March, July and November, and may continue in session one week. In the county of Erath, on the fifth Mondays after the first Mondays in March, July and November, and may continue in session three weeks. In the county of Hamilton, on the eighth Mondays after the first Mondays in March, July and November, and may continue in session three weeks. In the county of Coryell on the eleventh Mondays after the first Mondays in March, July and November, and may continue in session until the business is disposed of.

Adopted and the bill ordered engrossed.

Senator Shannon moved to still further suspend the rules, and place the bill on its third reading.

Carried by the following vote:

YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Grace,  
Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Tilson---26.

NAYS—none.

Not voting—Terrell.

The bill was read third time and passed by the following vote:

YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Ford,  
Gooch,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,

McCulloch,  
Moore,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Tilson— 22.

NAYS—none.

Not voting—Edwards, Grace, Storey, Swain, Terrell.

Senator Storey, chairman of committee on finance, (by leave) submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

I am instructed by the finance committee to report the accompanying joint resolution, making an appropriation to pay interest on the bonded debt of the State falling due March 1, A. D. 1879, and to second its passage.

STOREY, *Chairman.*

On motion of Senator Storey, the special orders were postponed, the rules suspended, and Senate joint resolution No. 202, making an appropriation to pay the interest on the bonded debt of the State falling due March 1, A. D. 1879, was taken up and read first time.

On motion of Senator Storey, the rules were further suspended, and the resolution placed on its second reading by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace.

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell—25.

## NAYS—none.

Not voting—Burton and Tilson.

Resolution read second time and ordered engrossed.

Senator ..... moved to still further suspend the rules and place the resolution on its third reading.

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Davenport,  
Edwards,  
Ford,  
Gooch,  
Grace.

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Tilson—24.

## NAYS—none.

Not voting—Burton, Duncan and Terrell.

The resolution was then read third time and passed by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Davenport,  
Edwards,  
Ford,  
Gooch,  
Grace.

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Tilson—24.

## NAYS—none

Not voting—Burton, Duncan and Terrell.

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. Edwin Hobby, President pro tempore of the Senate:*

Your committee on engrossed bills have examined and find correctly engrossed Senate bill No. 97, entitled "An act to provide for the payment and redemption of the bonds of the State of Texas that will become redeemable on the first day of July, A. D. 1879, and for the payment of approved pension certificates by the sale of five per cent. bonds

of the State and to make an appropriation to carry into effect the provisions of the same," and report it correctly engrossed.

BROWN, *Chairman.*

On motion of Senator Gooch, the special orders were postponed, rules suspended and Senate bill No. 97, entitled "An act to provide for the payment and redemption of the bonds of the State of Texas that will become redeemable on the first day of July, A. D. 1879, and for payment of approved pension certificates by the sale of five per cent. bonds of the State, and to make an appropriation to carry into effect the provisions of the same," was taken up and read third time.

Senator Burnett offered the following amendment:

Strike out "gold coin" wherever it occurs, and insert "lawful money of the United States."

Senator Brown offered the following substitute for the amendment of Senator Burnett:

Strike out the word "coin" wherever it occurs in the bill, and insert after the word "gold" wherever it occurs in the bill the words "or silver coin."

Senator Duncan offered the following amendment to the substitute of Senator Brown:

Amend after the words "gold or silver coin" the words "at the option of the State."

Senator Buchanan offered the following substitute for the substitute of Senator Brown:

Insert in lieu of the words "gold coin," in line two, page 5, the words "lawful money."

Senator Swain moved to lay all the pending amendments upon the table.

Carried by the following vote:

YEAS.		
Davenport,	Ledbetter,	Stewart,
Gooch,	McCulloch,	Swain,
Houston,	Moore,	Terrell,
Lane,	Patton,	Tilson—13.
Lair,		
NAYS.		
Brown,	Grace,	Ripetoe,
Buchanan,	Guy,	Shannon,
Burnett,	Hobby,	Storey—11.
Duncan,	Martin,	

Not voting—Burton, Edwards, Ford. (Senators Edwards and Burton, being paired off, did not vote.)

Senator Shannon offered the following amendment:

Strike out "\$1000," as to the denomination of the bonds, and insert in lieu thereof "bonds of the denomination of not less than \$50 or more than \$100."

Senator Brown offered the following as a substitute for the amendment of Senator Shannon:

Amend the bill by substituting in place of "bonds of \$1000," "bonds of not less than \$50 nor more than \$1000, preference in all cases being given to bonds of the smaller amounts, whenever they can be placed at the rate of interest provided in the bill."

Senator Shannon accepted the substitute of Senator Brown for his amendment.

The amendment as substituted was lost by the following vote:

YEAS.		
Brown,	Ford,	Ripetoe,
Burnett,	Grace,	Shannon—8.
Duncan,	Hobby,	

NAYS.		
Buchanan,	Lair,	Patton,
Davenport,	Ledbetter,	Stewart,
Gooch,	Martin,	Storey,
Guy,	McCulloch,	Swain,
Houston,	Moore,	Terrell—16.
Lane,		

Not voting—Burton, Edwards, Tilson.

Senators Edwards and Burton being paired, did not vote.

The president *pro tempore* then signed Senate bill No. 21, entitled "An act to provide for designating and surveying 3,050,000 acres of the unappropriated public domain for the erection of a new State capitol and other necessary public buildings at the seat of government."

The bill under consideration (Senate bill No. 97) was then passed by the following vote:

YEAS.		
Brown,	Guy,	Moore,
Buchanan,	Hobby,	Patton,
Burnett,	Houston,	Ripetoe,
Davenport,	Lane,	Stewart,
Duncan,	Lair,	Shannon,
Edwards,	Ledbetter,	Storey,
Ford,	Martin,	Swain,
Gooch,	McCulloch,	Terrell—24.

NAYS—none.

Not voting—Burton, Grace, Tilson.

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. Edwin Hobby, President pro tempore of the Senate:*

Your committee on engrossed bills have examined Senate joint resolution No. 202, making an appropriation to pay the interest on the bonded debt of the State to the first day of March, A. D. 1879, and find it correctly engrossed.

BROWN, *Chairman.*

Senator Grace, chairman of the committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and find correctly enrolled and properly signed, Senate bill No. 21, "An act to provide for designating, surveying and sale of 3,050,000 acres of the unappropriated public domain for the erection of a new State capitol and other necessary public buildings at the seat of government and to provide a fund to pay for surveying said lands," and presented the same to the governor at 12:15 P. M. this day for his signature.

GRACE, *Chairman.*

Senator Lair offered the following resolution:

"I move to postpone all special orders to such time as they will come up in their regular order, and that they resume their respective places on the calendar."

Adopted.

Senator Edwards made the point of order that it required a two-third vote to adopt the resolution of Senator Lair.

Overruled, the chair deciding that a simple majority vote could postpone.

Senator Gooch moved to take up his motion to reconsider the vote of yesterday rejecting the report of the free conference committee on the disagreement of the two houses on Senate bill No. 20, entitled "An act to establish a Penal Code of Criminal Procedure for the State."

Carried, and the vote reconsidered.

Senator Gooch offered the following resolution:

*Resolved*, That the House of Representatives be requested to appoint a committee of three members, to act with a like committee to be appointed by the Senate, as a committee of free conference to take into further consideration the disagreement between the two houses in relation to Senate bill No. 20, and report an agreement thereon if same can be effected.

Adopted, and the same committee appointed as acted before—Senators Edwards, Stewart and Storey.

The committee asked to be excused from serving again, and were so excused by the Senate, when the president *pro tempore* appointed as said committee in their stead, Senators Burnett, Davenport and Shannon.

Senator Stewart moved to suspend the rules and take up Senate bill No. 98, entitled "An act to fix the fees of the department of State in certain cases."

Carried, and the bill taken up.

On motion of Senator Stewart, the Senate concurred in House amendments.

Senator Terrell presented the invitation from his royal highness, King Momus, inviting the members of the Legislature to attend his grand carnival to be held at his grand capitol (Galveston) on the 25th instant, which was read to the Senate by order of the president *pro tempore*.

Senator Storey (by leave) introduced a bill entitled "An act to authorize the treasurer to keep a special deposit account with the general land office, and to provide how money shall be placed to the credit of said account and how withdrawn or transferred."

Read by caption and referred to the committee on finance.

On motion of Senator Terrell, the rules were suspended and Senate bill No. 59, entitled "An act to reorganize the seventeenth judicial district," was taken up and substituted.

On motion of Senator Terrell, the rules were suspended and the bill placed on second reading by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Gooch,

Grace,  
Guy,  
Hobby,  
Lair,  
Martin,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—21.

## NAYS.

Edwards,  
Houston,

Lane,

Ledbetter—4.

Not voting—Ford, Shannon.

Bill was read the second time and ordered engrossed.

On motion of Senator Terrell, the rules were suspended and the bill placed on its third reading by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Gooch,  
Grace,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—25.

## NAYS—none.

Not voting—Ford, Shannon.

Bill was read the third time and passed by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Grace,  
Guy,

Hobby,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—22.

## NAYS.

Edwards,

Houston—2.

Not voting—Ford, Gooch, Shannon.

On motion of Senator Terrell, the rules were suspended, and Senate bill No. 60, entitled "An act to amend an act entitled 'an act to fix the times for holding the terms of the district court in the seventeenth judicial district, including the county of McCulloch,'" was taken up, substituted, read second time, and ordered engrossed.

Senator Terrell moved to further suspend the rules and place the bill on its third reading.

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Grace,  
Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

## NAYS—none.

Not voting—Shannon.

The bill was read the third time and passed by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,

Edwards,  
Ford,  
Gooch,  
Grace,  
Guy,  
Hobby,

Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,



Moore,  
Patton,  
Ripetoe,

Stewart,  
Storey,  
Swain,

Terrell,  
Tilson—26.

NAYS—none.

Not voting—Shannon.

A message was received from the House announcing the passage by that body of House bill No. 304, entitled "An act to repeal 'an act to encourage irrigation and navigation,'" approved August 21, 1876.

Senator Swain moved to adjourn until to-morrow morning at 9 o'clock. Lost by the following vote:

Buchanan,  
Burnett,  
Davenport,  
Duncan,

YEAS.  
Grace,  
Lair,  
McCulloch,  
Moore,

Patton,  
Stewart,  
Swain,  
Tilson--12.

Brown,  
Burton,  
Edwards,  
Ford,  
Gooch,

NAYS.  
Guy,  
Hobby,  
Houston,  
Lane,  
Ledbetter,

Martin,  
Ripetoe,  
Storey,  
Terrell—14.

Not voting—Shannon.

Senator Lane (by leave) introduced a bill entitled "An act to require persons inclosing public free school lands to pay an annual rent therefor."

Read by caption and referred to the committee on finance.

"On the final passage of Senate bill No. 96 to sell the public school lands, I vote no, because I believe the provision which appropriates all future taxes on the school lands, after they become by purchase private property, to be unconstitutional.

TERRELL."

Senator Storey moved to adjourn until to-morrow morning 10 o'clock. Carried by the following vote.

Brown,  
Burnett,  
Burton,  
Davenport,  
Edwards,  
Ford,  
Gooch,

YEAS.  
Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,

Moore,  
Patton,  
Ripetoe,  
Stewart,  
Storey,  
Terrell--20.

Buchanan,  
Duncan,  
Not voting—Shannon.

NAYS.  
Grace,  
McCulloch,

Swain,  
Tilson--6.

### THIRTY-FOURTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 21, 1879. }

The Senate met pursuant to adjournment; president *pro tempore* in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Moore, the reading of the journals of yesterday was dispensed with.

The journals of yesterday stated that the president was in the chair, when it should have been the president *pro tempore* in the chair.

In the amendment of Senator Davenport to Senate bill No. 176, the

thirtieth district was printed thirteenth; and in Senator Shannon's amendment to Senate bill No. 97, denomination was printed administration.

Upon examination, the errors were found to be only typographical.

The manuscript journal being correct, except in one case, was then adopted and the printed journal corrected to correspond.

The president after reading their captions, signed the following bills:

Senate bill No. 6, entitled "An act prescribing the times of holding the courts in the twenty-fourth judicial district."

Senate joint resolution No. 202, entitled "Joint resolution making an appropriation to pay the interest on the bonded debt of the State to the first day of March, A. D. 1879."

(Senator Ledbetter in the chair.)

Senator McCulloch offered the following resolution:

*Resolved*, That in memory of the father of our republic, George Washington, the Senate adjourn to-day at 1 o'clock until 10 o'clock A. M. Monday, the twenty-fourth instant. Lost by the following vote:

YEAS.

Burton,  
Ford,  
Gooch,  
Guy,

Hobby,  
Houston  
McCulloch,  
Patton,

Ripetoe,  
Storey,  
Swain,  
Terrell--12.

NAYS.

Brown,  
Burnett,  
Davenport,  
Duncan,  
Grace,

Lane,  
Ledbetter,  
Martin,  
Moore,

Motley,  
Stewart,  
Shannon,  
Tilson--13.

Not voting—Buchanan, Edwards, Lair.

Senator Burnett, from the free conference committee on Senate bill No. 20, entitled "An act to establish a Penal Code and Code of Criminal Procedure for the State," submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

The joint committee of free conference on Senate bill No. 20, having duly considered the only matter of disagreement between the two houses, namely, the refusal of the Senate to concur in House amendment striking out article 758a to the bill, have agreed on and respectfully submit the following recommendation:

That the Senate recede from its refusal to concur with the House amendment striking out article 758a of the Penal Code.

BURNETT,  
DAVENPORT,  
SHANNON,  
*Senate Committee.*

GAUSE,  
JOHNSON,  
FROST,  
*House Committee.*

The report was read and adopted.

A message was received from the House announcing the passage by that body of House bill No. 258, entitled "An act to amend section 17 of 'an act to incorporate the Gulf, Colorado and Santa Fe Railway Company, and to grant land in aid of the construction of the same,'" passed May 28, 1873; Senate bill No. 54, entitled "An act to adopt and estab-

lish the Revised Statutes of the State of Texas;" Senate joint resolution No. 202, making an appropriation to pay the interest on the bonded debt of the State to the first day of March, A. D. 1879; that the House has adopted the report of the conference committee on Senate bill No. 20, entitled "An act to establish a Penal Code and Code of Criminal Procedure for the State;" and that Messrs. Gause, Frost and Johnston, of Shelby, have been appointed as a committee of free conference upon the part of the House upon differences arising on House bill No. 141.

On the differences arising between the houses on House bill No. 141, the president appointed on the part of the Senate, Senators Terrell, Lane and Gooch as a committee of free conference to act with the committee just reported from the House.

House bill No. 304, entitled "An act to repeal 'an act to encourage irrigation and navigation,'" approved August 21, 1876, was taken up and referred to the committee on State affairs.

Senator Grace, chairman of the committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and find correctly enrolled and properly signed, Senate bill No. 67, "An act prescribing the times of holding the district courts in the twenty-fourth judicial district;" also, Senate joint resolution No. 202, "making an appropriation to pay the interest on the bonded debt of the State to the first day of March, A. D. 1879," and presented the same to the governor at 10:10 o'clock A. M., this day, for his signature.

GRACE, *Chairman.*

On motion of Senator Edwards, the rules were suspended, and House bill No. 255, entitled "An act to reorganize the fourth judicial district of the State of Texas, and to fix the times for holding courts in the different counties composing the same," was taken up and read second time.

Senator McCulloch offered the following amendment:

Amend as follows: Strike out all of sections 3 and 4, and substitute as follows:

Section 3. That all writs and process heretofore issued out of the district courts of the several counties named above, and returnable to the terms of their respective courts as they now exist, be and the same are hereby made returnable to the first terms of said courts, as provided for in this act.

Section 4. That all laws and parts of laws in conflict with the provisions of this act be and the same are hereby repealed.

Section 5. That the overcrowded condition of the dockets in said district courts, whereby public business is much delayed, creates an imperative public emergency and necessity that the constitutional rules should be suspended; *provided*, that this act shall take effect on the third Monday in March, at which time the first term only held under this act shall begin in Houston county on the third Monday in March, 1879, and may continue in session five weeks.

Adopted.

Senator Edwards moved to suspend the rules and place the bill on its third reading.

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

## NAYS—none.

Not voting—Davenport, Martin.

The bill was read third time and passed by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

## NAYS—none.

Not voting—Davenport, Martin.

On motion of Senator Tilson, the rules were suspended and Senate bill No. 149, entitled "An act to provide for the change of location of the court house of Marion county," was taken up and read first time.

Senator Tilson moved to suspend the rules and place the bill upon its second reading.

Carried by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,  
Guy,

Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

## NAYS—Brown.

Not voting—Burton.

Bill read second time.

Senator Tilson offered the following amendment:

After the word "necessity," in last section, insert "and an emergency exists."

Adopted.

Senator Brown offered the following amendment:

Strike out section three.

Lost.

Bill ordered engrossed.

Senator Tilson moved to still further suspend the rules and place the bill on its third reading.

Carried by the following vote:

Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,  
Guy,

YEAS.  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

NAYS—Brown.

Not voting—Burton.

The bill was read third time and passed by the following vote:

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

YEAS.  
Grace,  
Guy,  
Hobby,  
Houston,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Motley,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—27.

NAYS—none.

Not voting—Lane.

(President in the chair.)

On motion of Senator Martin, the rules were suspended and Senate bill No. 167, entitled "An act creating the office of public weigher and regulating the appointment and defining the duties and liabilities thereof," was taken up and read first time.

On motion of Senator Edwards, the rules were suspended and bill placed on its second reading by the following vote:

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

YEAS.  
Grace,  
Guy,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—26.

NAYS—none.

Not voting—Hobby, Moore.

Bill read second time.

On motion of Senator Brown, the amendments of the committee were adopted.

Senator Brown offered the following amendment :

Amend section 1 by adding the following: "*Provided*, That in cities receiving for sale or shipment less than twenty-five thousand bales of cotton per annum, not more than two public weighers shall be appointed."

Adopted.

Senator Burton offered the following amendment :

Amend by striking out the words "incorporated city" wherever it

occurs in the bill, and insert "any town or village where cotton or other produce is weighed and sold for the convenience of the farmer."

Lost and the bill ordered engrossed.

On motion of Senator Swain, the rules were suspended and Senate bill No. 163, entitled "An act to create and establish a state board of health for the State of Texas and to define their powers and duties," was taken up by the following vote:

YEAS.		
Brown,	Guy,	Patton,
Buchanan,	Hobby,	Ripetoe,
Burnett,	Houston,	Stewart,
Davenport,	Lane,	Shannon,
Burton,	Lair,	Storey,
Edwards,	Ledbetter.	Swain,
Ford,	Martin,	Terrell,
Gooch,	McCulloch,	Tilson—26.
Grace,	Moore,	
NAYS.		
Duncan,		Motley—2.

Bill was read the first time.

Senator Swain moved to suspend the rules and place the bill on its second reading.

Carried by the following vote:

YEAS.		
Brown,	Lane,	Ripetoe,
Buchanan,	Lair,	Shannon,
Davenport,	Ledbetter,	Storey,
Edwards,	Martin,	Swain,
Gooch,	McCulloch,	Terrell,
Houston,	Moore,	Tilson—18.
NAYS.		
Burnett,	Duncan,	Motley—3.

Not voting—Burton, Ford, Grace, Guy, Hobby, Patton, Stewart.

Bill was read second time.

Senator McCulloch offered Senate bill No. 25 as a substitute for the bill just read.

On motion of Senator McCulloch, the bill and substitute were postponed until to-morrow and 100 copies ordered printed.

(Senator Martin in the chair.)

The following message was received from his excellency the governor, which was taken up and read:

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 21, 1879. }

*To the honorable the Senate and House of Representatives, in Legislature assembled:*

The Legislature is authorized to levy taxes for the support of public schools. By the law of 1876 for the levy and collection of taxes, one-fourth of fifty cents on the one hundred dollars and one dollar poll tax, annually thereafter, was levied and collected, and is being collected, for the available common school fund, in accordance with the third and fifth sections of the seventh article of the constitution, in the latter of which sections it is said: "The taxes herein authorized and levied shall be the available school fund, which shall be applied annually to the support of the public free schools; and no

law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever." Therefore, the one-fourth of the *ad valorem* taxes and one dollar poll tax, that enter into, and is part of the \$900,000 apportioned by the board of education as the amount to be applied during the present scholastic year in pursuance to the act of 1876, authorizing them to make such apportionment, was levied and collected, and is being collected, as part of the available school fund, and is bound to belong to that fund when collected, whether it is deposited in the county treasuries or in the treasury of the State. It is none the less so, because there must be an act of appropriation passed by the Legislature to authorize the board of education to give orders to the tax collectors of the several counties to pay it over to the county treasurers. Being levied and collected for the available free common school fund, it becomes part of it, and remains part of it, wherever it may be, whether it is appropriated to be paid out for that purpose by an act of the Legislature or not, and under the constitution it cannot be appropriated for "any other purpose whatever."

When coming to act, as chief executive, upon the bill appropriating \$600,000 for the free common schools, lately passed by the almost unanimous vote of both houses of the Legislature, I have deliberately arrived at the conclusion that it should be approved, notwithstanding it may make it necessary to issue bonds or, if necessary, increase the taxes to meet the deficiencies that have long been accumulating from year to year in the past. The present Legislature are not responsible for the present embarrassed condition of the finances of the State. It is the part of true statesmanship to fully understand it as it is and to practically meet the emergency in which it involves us so that in the future the available revenue shall certainly be sufficient to defray the necessary expenses of the State government. That is the duty of the present. And that you may have authentic and reliable information upon which to base your action, I herewith respectfully submit estimates by the comptroller of deficiency at present and in the future to be provided for.

O. M. ROBERTS.

COMPTROLLER'S OFFICE,  
AUSTIN, February 20, 1879. }

*His Excellency O. M. Roberts, Governor of Texas:*

DEAR SIR—In reply to your first communication of the 19th instant, I have the honor to state, viz:

Warrants on the treasury outstanding February 19, 1879,	
amount .....	\$46,871 55
Estimated deficiencies for the year ending August 31, 1878 and previous years:	
Repairs and furniture governor's mansion and grounds. ....	\$250 00
Gas for mansion .....	33 00
Recovering fugitives from justice .....	10,101 00
Contingent expenses general land office .....	100 00
Fees of attorney general .....	2,800 00
Clerk fees supreme court .....	1,000 00
Sheriff fees conveying prisoners to the penitentiary .....	50,000 00
Cash to be paid sheriffs, clerks and attorneys .....	150,000 00
Payment of pensioners under present law .....	145,625 00
Books, stationery and furniture court of appeals .....	300 00

The above estimates are taken on the basis that if a given amount appropriated will last six months, that twice the amount would be necessary for twelve months. The estimated deficiencies on August 31, 1878, were \$300,000. Claims have come in since that time which have increased the amount to \$360,108.

Very respectfully,

STEPHEN A. DARDEN, *Comptroller.*

COMPTROLLER'S OFFICE,  
AUSTIN, February 20, 1879. }

To His Excellency O. M. Roberts, Governor of Texas:

DEAR SIR—In reply to your communication of 19th inst., requesting to be informed what my estimate is of the probable deficiency in the revenue at the close of the fiscal year ending August 31, 1878, and supposing further that no bonds be issued with which to extinguish in part the existing deficiency, and no other means be provided for raising revenue than those now in force, I beg to hand you the following statement, viz:

Supposed appropriation for fiscal year ending August 31, 1879.....	\$1,283,232 00
Add probable deficiency in appropriation for the year, say	150,000 00
Add probable deficiencies for the two years 1877 and 1878, say.....	300,000 00
	<hr/>
We thus have total revenue necessary to August 31, 1879..	\$1,733,232 00
Against which we have as follows, viz:	
Probable receipt of revenue from all sources during the fiscal year ending August 31, 1879.....	\$1,626,657 68
Deduct one-fourth for public schools.....	506,664 42
	<hr/>
Balance .....	\$1,219,993 26
To which add balance of revenue on hand August 31, 1878, in excess of unpaid warrants.....	76,049 57
	<hr/>
Total .....	\$1,296,049 63

Excess of probable expenditures over probable receipts for the three fiscal years ending August 31, 1879..... 437,189 37

My opinion is that a change of the fiscal year from August 31 to November 30, will not effect any material change in either receipts or expenditures.

Very respectfully,

STEPHEN H. DARDEN, *Comptroller.*

Senator Shannon moved to print 1000 copies of the message for the use of the Senate.

Senator Lair moved to strike out 1000 and insert 500.

Withdrawn.

The motion of Senator Shannon was adopted.

On motion of Senator Lair, the rules were suspended and Senate bill No. 180, entitled "An act to amend article 358, chapter 3, of the Penal Code," was taken up and read second time.

The bill was ordered engrossed by the following vote:

YEAS.

Burnett,  
Davenport,  
Gooch,  
Grace,

Lane,  
Lair,  
Martin,  
Moore,

Motley,  
Shannon,  
Swain,  
Tilson--12.



## NAYS.

Brown,  
Burton,  
Duncan,  
Ford,

Guy,  
Houston,  
Ledbetter,

Patton,  
Stewart.  
Terrell--10.

Not voting—Buchanan, Edwards, Hobby, McCulloch, Ripetoe, Storey.

Senator Grace, chairman of committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and compared and find correctly enrolled and properly signed Senate bill No. 98, "An act to fix the fees of the department of state in certain cases," and presented the same to the governor at 11 A. M. this day for his signature.

GRACE, *Chairman.*

On motion, Senator Storey, chairman of committee on finance (by leave) submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance to whom was referred Senate bill No. 203, entitled "An act to authorize the state treasurer to keep a special deposit account with the general land office and to provide how money shall be placed to the credit of said account and how withdrawn or transferred," have carefully considered the same and I am instructed by the committee to report the bill back to the Senate with the recommendation that it pass.

STOREY, *Chairman.*

(President in the chair.)

On motion of Senator Storey, the rules were suspended and Senate bill No. 203, entitled "An act to authorize the state treasurer to keep a special deposit account with the general land office, and to provide how money shall be placed to the credit of said account and how withdrawn or transferred," was taken up and read first time.

Senator Storey moved to suspend the rules and place the bill on its second reading.

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Houston,  
Lair,  
Lane,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Motley,  
Ripetoe,  
Shannon,  
Stewart,  
Storey,  
Swain,  
Terrell--25.

## NAYS—none.

Not voting—Grace, Patton, Tilson.

Bill was read second time and ordered engrossed.

On motion of Senator Storey, the rules were still further suspended, and the bill placed upon its third reading by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,

Burton,  
Davenport,  
Duncan,

Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,

Martin,  
McCulloch,  
Moore,  
Motley,  
Patton,  
Ripetoe,

Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—27.

NAYS—none.

Not voting—Grace.

The bill was read third time and passed by the following vote:

YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Motley,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—27.

NAYS—none.

Not voting—Grace.

Senator Lair entered a motion to reconsider the vote passing Senate bill No. 180, entitled "An act to amend article 358, chapter 3, of the Penal Code," to its engrossment.

Senator Duncan moved to suspend the rules and take up Senate bill No. 54, entitled "An act to adopt and establish the Revised Civil Statutes of the State of Texas."

Carried, and the bill taken up.

On motion of Senator Ledbetter, the Senate concurred in House amendments.

Senator Grace (by leave) introduced a bill entitled "An act to prevent officers of the different asylums of the State from misapplying supplies."

Read by caption and referred to judiciary committee No. 2.

Senator Gooch (by leave) introduced a joint resolution authorizing the governor of the State of Texas to lease certain grounds belonging to the capitol grounds of the State in the city of Austin.

Referred to the committee on state affairs.

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined Senate bill No. 176, entitled "An act establishing the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, prescribing the times of holding the district courts therein and providing for the appointment of district judges for the twenty-eighth, twenty-ninth and thirtieth judicial districts."

Also Senate bill No. 59, entitled "An act to reorganize the seventeenth judicial district of the State of Texas."

Also Senate bill No. 60, entitled "An act to amend an act entitled 'an act to fix the times of holding the terms of the district court for the seventeenth judicial district, including the county of McCulloch,'" approved July 29, 1876, and report them all correctly engrossed.

BROWN, *Chairman.*

On motion of Senator Edwards, the rules were suspended and substi-

tute for Senate joint resolutions Nos. 55 and 102, proposing amendments to article 5 of the constitution was taken up for consideration.

On motion of Senator Stewart, the pending business was postponed, the rules were suspended and Senate bill No. 121, entitled "An act supplemental and amendatory to an act entitled 'an act to enable part owners of land to obtain partition thereof and for other purposes,'" passed March 5, 1840, was taken up and read first time.

On motion of Senator Lane, the pending business was postponed, rules suspended and Senate bill No. 69, entitled "An act requiring the owners of land to pay the taxes due thereon before recording their titles thereto," was taken up and read second time.

Senator Lane offered the following amendment:

Amend section 1, in line six, after the words "that all the" insert the words "state and county."

Adopted and bill ordered engrossed.

A message was received from the House announcing the passage by that body of Senate bill No. 176, entitled "An act to reorganize the fourth judicial district of the State of Texas, and to fix the times for holding courts in the different counties composing the same."

The president signed, after reading its caption, Senate bill No. 98, entitled "An act to fix the fees in the department of state in certain cases."

Senator Patton, chairman of the committee on claims and accounts, (by leave) submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public claims and accounts, to whom was referred Senate bill No. 64, entitled "An act for the relief of C. Jordan," have duly considered the same, and instruct me to report the same back to the Senate with the recommendation that it do not pass.

PATTON, *Chairman.*

Report read and adopted, and bill lost.

Senator Shannon, chairman of the committee on judicial districts, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on judicial districts to whom was referred Senate bill No. 181, entitled "An act to reorganize the sixteenth judicial district and to provide the time of holding the courts therein," have had the same under consideration, and I am instructed to report it back to the Senate and recommend its passage.

SHANNON, *Chairman.*

Senator Houston (by leave) introduced a bill entitled "An act supplemental to and amendatory of an act entitled 'an act to adopt and establish the Revised Civil Statutes of Texas.'"

Read by caption and referred to judiciary committee No. 1.

On motion of Senator Grace, the rules were suspended and House bill No. 217, entitled "An act to release certain inhabitants in the county of Lamar in this State, from this payment of taxes assessed and now due for the year 1878, in consequence of a great public calamity," was taken up and read first time.

Senator McCulloch offered the following resolution:

*Resolved,* That in respect for the memory of George Washington, the Senate, when it adjourns to-day, will adjourn on this eve of the anniversary of his birth until Monday morning at 10 o'clock.

Senator Brown offered the following substitute:

*Resolved*, That the Senate, while cherishing the profoundest respect for the memory of the illustrious Washington, does not feel justified, in view of the important business now pending and in view of the limited time remaining before the expiration of the present regular session of the Legislature, in dispensing with the ordinary daily session on the anniversary of his birth; therefore

*Resolved*, That the Senate do now adjourn to meet to-morrow morning, February 22, at 10 A. M.

Senator Brown's substitute was lost by the following vote:

YEAS.		
Brown,	Houston,	Stewart,
Burnett,	Lane,	Shannon,
Gooch,	Martin,	Tilson—9
NAYS.		
Buchanan,	Grace,	Motley,
Burton,	Guy,	Patton,
Davenport,	Hobby,	Ripetoe,
Duncan,	Lair,	Storey,
Edwards,	Ledbetter,	Swain,
Ford,	McCulloch,	Terrell—18.

Not voting—Moore.

Senator Houston moved to adjourn until 3 P. M.

Lost by the following vote:

YEAS.		
Burnett,	Grace,	Ripetoe,
Edwards,	Houston,	Stewart,
Ford,	Lane,	Shannon—11.
Gooch,	Motley,	
NAYS.		
Brown,	Hobby,	Patton,
Buchanan,	Lair,	Storey,
Burton,	Ledbetter,	Swain,
Davenport,	Martin,	Terrell,
Duncan,	McCulloch,	Tilson—17.
Guy,		

Not voting—Moore.

Senator Brown moved to adjourn until 10 o'clock A. M. to-morrow.

Senator Storey made the point of order that no intervening business having been transacted since the last motion to adjourn was acted upon, the last motion of Senator Brown was out of order.

Point of order sustained.

The pending resolution of Senator McCulloch was then adopted by the following vote:

YEAS.		
Buchanan,	Hobby,	Patton,
Burton,	Houston,	Stewart,
Duncan,	Lair,	Storey,
Ford,	McCulloch,	Swain,
Guy,	Motley,	Terrell—15.
NAYS.		
Brown,	Gooch,	Martin,
Burnett,	Grace,	Ripetoe,
Davenport,	Lane,	Shannon,
Edwards,	Ledbetter,	Tilson—12.

Not voting—Moore.

On motion of Senator Edwards, the Senate took recess until 3:30 P. M. Recess expired and the Senate reconvened, the president in the chair. Roll called; not a quorum present.

Senator Patton moved a call of the Senate.

Call sustained.

Roll called; absent—Ford, Lair and Motley, who were on committee duty.

A quorum having appeared, Senator Edwards moved a suspension of the call.

Carried and the call suspended.

The pending business was committee's substitute for joint resolutions Nos. 5 and 102, proposing amendments to article 5 of the state constitution, which, with the substitute for the same by Senator Homan, was taken up for consideration.

The substitute offered by Senator Homan for the substitute recommended by the committee was lost.

Senator Edwards moved to adopt the substitute recommended by the committee.

Carried.

Senator Edwards moved to consider the substitute of committee by sections.

Carried.

Senator Shannon moved to adopt section 1 of the substitute.

Senator Martin offered an amendment, to add "county courts" after "district courts," which he afterward withdrew.

A message was received from the House announcing the passage by that body of the following resolution:

WHEREAS, It will incur an unnecessary and enormous outlay of both time and money to have enrolled the Civil and Criminal Codes passed by this Legislature, as required by joint rule No. 9; therefore

*Be it resolved, the Senate concurring,* That said joint rule No. 9 be suspended as far as relates to the said codes, and that an enrollment of the amendments made thereto, properly arranged, shall be considered a proper and sufficient enrollment of said codes.

Senator Edwards moved to postpone the pending business five minutes to consider the concurrent resolution just reported from the House.

Carried, and the resolution read and unanimously adopted.

The first section of the joint resolution was then adopted.

On motion of Senator Edwards, the word "which" was struck out of section 2 in ninth, eleventh and twelfth lines and the word "whom" inserted instead thereof.

On motion of Senator Gooch, the vote just taken was reconsidered.

Senator Edwards then withdrew his motion and moved to strike out the word "which" in ninth line and insert in lieu thereof the word "whom."

Carried, and the second section adopted.

The president, after reading its caption, signed Senate bill No. 176, entitled "An act establishing the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, prescribing the times of holding the district courts therein, and providing for the appointment of district judges for the twenty-eighth, twenty-ninth and thirtieth judicial districts."

Senator Terrell offered the following amendment:

On page 3 insert in line thirteen, after the word "lot," the words "which allotment and division shall be entered of record by the supreme court, and the governor notified thereof by the chief justice."

Adopted.

The third section was then adopted.

Senator Burton offered the following:

Section 4, lines twenty-one and twenty-two, strike out "\$3550," and insert "\$3300."

Lost.

Senator Duncan offered the following:

Add to line fifteen, on page 3, section 3, "so that two judges shall be elected every two years thereafter."

Lost.

Also the following:

Add after line twenty, in section 4, after the words "six years," these words, "after the expiration of first allotment."

Adopted, and section 4 adopted.

Senator Edwards (by leave) introduced a bill entitled "An act to provide for the state library and for the supreme court library."

Read by caption and referred to the committee on insurance, statistics, history, etc.

Senator Storey moved to adjourn until 10 o'clock Monday morning.

Lost by the following vote:

YEAS.

Buchanan,  
Edwards,  
Ford,  
Gooch,

Moore,  
Patton,  
Stewart,

Storey.  
Swain.  
Terrell—10.

NAYS.

Brown,  
Burnett,  
Burton,  
Davenport,

Duncan,  
Grace,  
Guy,  
Hobby,

Houston,  
Lane,  
Motley,  
Shannon—12.

Not voting—Ledbetter, Martin, Ripetoe, McCulloch.

Senator Grace, chairman of the committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and compared and find correctly enrolled and properly signed Senate bill No. 176, entitled "An act establishing the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, prescribing the times of holding the district courts therein, and providing for the appointment of district judges for the twenty-eighth, twenty-ninth and thirtieth judicial districts," and the same was presented to the governor this day at 5 o'clock P. M. for his signature.

GRACE, *Chairman.*

Senator Houston moved to reconsider the resolution of Senator McCulloch to adjourn to-morrow in honor of Washington's birthday.

Senator Patton moved a call of the Senate.

Call sustained.

Roll called. Absent—Senators Lair, Motley and McCormick, who were on committee duty.

Senator Duncan moved to suspend the call.

The Senate refused to suspend the call.

Senators Lair, Motley and McCulloch appearing, the call was suspended. The motion of Senator Houston to reconsider was then voted on and carried by the following vote:

YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,

Gooch,  
Grace,  
Houston,  
Lair,  
Ledbetter,  
Martin,

Moore,  
Ripetoe,  
Stewart,  
Shannon,  
Swain,  
Tilson—19.

NAYS.

Ford,  
Guy,  
Hobby,

Lane,  
McCulloch,  
Motley,

Patton,  
Storey,  
Terrell—9.

On motion of Senator Houston, the Senate adjourned until 10 o'clock to-morrow morning.

THIRTY-FIFTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 22, 1879. }

The Senate met pursuant to adjournment; president in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Tilson, the reading of the journals of yesterday was dispensed with and the same adopted.

Senator Burnett presented the petition of many citizens of Madison county "asking that the Sunday law be so amended as to prohibit the performance of any secular labor and the keeping open of offices and business houses on the Sabbath day and providing adequate penalties for the violation of said law."

Read and referred to committee on state affairs.

Senator Grace presented a petition from Joseph Fenner, "asking for the donation of a bounty warrant for 1280 acres of land, and a donation warrant of 640 acres of land, being the quantity of land to which the said Fenner is entitled as a soldier in the Texas army of 1836, under Col. J. W. Fannin, at Goliad," accompanied by a bill entitled "An act for the relief of Joseph Fenner."

The memorial and bill was referred to the committee on private land claims.

House bill No. 258, entitled "An act to amend section 17 of an act to incorporate the Gulf, Colorado and Santa Fe Railway Company, and to grant land in aid of the construction of the same," passed May 28, 1873, was taken up and referred to the committee on internal improvements.

Senator Edwards introduced a bill entitled "An act to reorganize the third judicial district, and prescribe the times of holding the courts in said district."

Read by caption and referred to the committee on judicial districts.

Senator Ripetoe introduced a bill entitled "An act to amend chapter 6 of title 15 of the new Penal Code by further defining and punishing the offense of kidnapping."

Read by caption and referred to judiciary committee No. 2.

Senator Burnett introduced a bill entitled "An act to amend 'an act to prohibit the judges of county courts of the State from practicing as attorneys or counselors-at-law in the county courts and the courts of the justices of the peace of this State, and to affix a penalty for a violation of its provisions,'" approved August 19, 1876.

Read by caption and referred to judiciary committee No. 2.

(Senator Storey in the chair.)

Senator Shannon moved to suspend the rules, postpone unfinished business and take up Senate bill No. 77, entitled "An act to regulate and control the assessment of taxes on real estate."

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Duncan,  
Edwards,  
Ford,  
Gooch,  
Grace,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Motley,  
Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Terrell,  
Tilson—25.

## NAYS—none.

Not voting—Davenport, Moore, Swain.

The bill was taken up and read the first time.

On motion of Senator Ledbetter, the rules were suspended, the unfinished business postponed ten minutes and Senate joint resolution No. 112, "in relation to the Agricultural and Mechanical College of Texas," was taken up and read second time.

On motion of Senator Moore, the substitute of the committee was adopted.

Senator Moore offered the following amendment:

*Resolved*, That the session of the Legislature being restricted to a short period by the constitution, and the further fact that the passage of this resolution and its importance to the well-being and success of the Agricultural and Mechanical College constitutes an imperative public necessity, that this joint resolution be at once passed, so that the constitutional rules requiring this bill to be read on three several days be suspended, therefore the rule is hereby suspended.

Adopted and resolution ordered engrossed.

On motion of Senator Moore, the rules were suspended and resolution placed upon its third reading by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Duncan,  
Edwards,  
Gooch,  
Grace,  
Guy,  
Hobby,

Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—25.

## NAYS.

Davenport,

Ford—2.

Not voting—Burton.

Resolution was read the third time and passed by the following vote:



YEAS.

Brown,  
Buchanan,  
Burnett,  
Duncan,  
Edwards,  
Gooch,  
Grace,  
Guy,  
Hobby,

Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson--25.

NAYS—Burton.

Not voting—Davenport, Ford.

(President in the chair.)

On motion of Senator Stewart, the unfinished business was postponed ten minutes, rules suspended and Senate bill No. 121, entitled "An act supplemental to and amendatory of an act entitled 'an act to enable part owners of land to obtain partition thereof, and for other purposes,'" passed March 5, 1840, was taken up, read the second time and ordered engrossed.

Senator Storey, chairman of committee on finance, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your finance committee have had under consideration Senate bill No. 204, entitled "An act to require persons inclosing public free school lands to pay an annual rent therefor," and I am instructed by the committee to report the bill back to the Senate, and recommend its passage.

STOREY, *Chairman.*

Senator Grace was granted leave of absence for one hour to attend to committee duty.

On motion of Senator Houston, the unfinished business was postponed five minutes, the rules suspended and Senate joint resolution No. 169, entitled joint resolution requesting the United States Congress to pass an act for the compensation of members of Congress elected from Texas in 1866, was taken up and read first time.

Senator Houston moved to suspend the rules and place the resolution on its second reading.

Carried by the following vote:

YEAS.

Brown,  
Buchanan,  
Burnett,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Houston,  
Lane,  
Lair,  
Martin,  
McCulloch,  
Moore,

Motley,  
Patton,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson--24.

NAYS.

Burton,

Ripetoe--2.

Not voting—Ledbetter.

Resolution read second time.

(President *pro tempore* in the chair.)

Senator Houston offered the following amendment to the pending bill:

Amend by adding:

Section —. It being important that this resolution should be for-

warded to the United States Congress at once for their action thereon, creates an imperative public necessity and emergency for the immediate passage thereof, and it is enacted that it take effect and be in force from and after its passage.

Adopted and resolution ordered engrossed.

Senator Houston moved to still further suspend the rules, and place the bill on its third reading.

Carried by the following vote:

YEAS.		
Brown,	Hobby,	Patton,
Buchanan,	Houston,	Stewart,
Burnett,	Lane,	Shannon,
Duncan,	Lair,	Storey,
Edwards,	Martin,	Swain,
Ford,	McCulloch,	Terrell,
Gooch,	Moore,	Tilson—23.
Guy,	Motley,	
NAYS.		
Burton,		Ripetoe --2.

Not voting—Ledbetter.

The resolution was read the third time and passed by the following vote, which was unanimous:

YEAS.		
Brown,	Guy,	Motley,
Buchanan,	Hobby,	Patton,
Burnett,	Houston,	Ripetoe,
Burton,	Lane,	Stewart,
Davenport,	Lair,	Shannon,
Duncan,	Ledbetter,	Storey,
Edwards,	Martin,	Swain,
Ford,	McCulloch,	Terrell,
Gooch,	Moore,	Tilson—27
NAYS—none.		

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined and report correctly engrossed the following bills, viz:

Senate bill No. 149, entitled "An act to provide for the change of location of the court house of Marion county."

Senate bill No. 203, entitled "An act to authorize the state treasurer to keep a special deposit with the general land office, and to provide how money shall be placed to the credit of said account and how withdrawn or transferred."

BROWN, *Chairman.*

Senator Terrell (by leave) introduced a bill entitled "An act granting to Mrs. Florence Whitis, executrix, the right to make a change in Laurel street, in the city of Austin."

Read by caption and referred to the committee on public buildings and grounds.

(President in the chair.)

The unfinished business of yesterday being the substitute for joint resolutions Nos. 5 and 102, proposing an amendment to article 5 of the state constitution, was taken up.

The amendment of Senator Patton, pending on adjournment yesterday, and which was as follows:

Amend section 5 by striking out, in line thirteen, all after the word "only," and inserting "at the discretion of the Legislature," was then considered.

Senator Burnett offered the following substitute for Senator Patton's amendment:

Section 5, line twelve, strike out all after the word "capital" where it first occurs in line twelve.

(Senator Swain in the chair.)

Senator Burnett's substitute was lost by the following vote :

YEAS.

Brown,  
Burnett,  
Houston,

Lair,  
Ledbetter,

Martin,  
Storey—7.

NAYS.

Buchanan,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Guy,  
Hobby,  
Lane,  
McCulloch,  
Moore,  
Motley,  
Patton,

Ripetoe,  
Stewart,  
Shannon,  
Swain,  
Terrell,  
Tilson--20.

Senator Terrell presented the following reason for his vote to be entered on the journals, on motion to strike out all after "capital," in line twelve, section 5:

"Though I believe the court should be permanent at the capital, I prefer, if it is localized, it should be done by legislative enactment and not by organic act. By placing it in the constitutional amendment it will, in my opinion, weaken the vote for the judiciary article we propose. The sensitiveness shown on this question always, when it is agitated, renders it proper, in my judgment, that it should not be settled now and in this way. I vote 'no.'"

Senator Storey, chairman of the committee on finance, submitted the following report:

*Hon. J. D. Sayers, President of the Senate :*

Your committee on finance, to whom was referred Senate bill No. 130, "To make an appropriation for the support of the state government for the year ending August 31, 1880, and for the additional period ending December 31, 1880," have considered the same and I am instructed by the committee to report as a substitute therefor, "a bill to be entitled an act to make an appropriation for the support of the state government for the years beginning March 1, 1879, and ending February 28, 1881," and to recommend that the substitute do pass. STOREY, *Chairman.*

On motion of Senator Storey, the rules were suspended, pending business postponed, and the bill and substitute just reported were taken up and 100 copies of the substitute ordered printed.

(President in the chair.)

On motion of Senator Hobby, Senator Storey was excused for the remainder of the day.

The pending amendment of Senator Patton was voted on and lost.

Senator Burnett offered the following amendment:

Section 5. Strike out in line thirteen the words "if the Legislature hereafter shall provide," and insert instead the following: "as is now or may be hereafter provided by law."

Senator Lane offered the following as a substitute for the amendment of Senator Burnett:

Amend by striking out all of section 5 after the word "jurisdiction," in line nine.

Senator Duncan moved a call of the house.

Call sustained.

Roll called; absent—Grace, Terrell.

Senator Lair moved to suspend the call.

Senators Grace and Terrell appeared and the call was suspended.

The substitute of Senator Lane was adopted by the following vote:

## YEAS.

Brown,  
Burnett,  
Burton,  
Davenport,  
Duncan,

Grace,  
Hobby,  
Lane,  
Lair,  
Ledbetter,

Martin,  
McCulloch,  
Storey,  
Swain,  
Terrell—15.

## NAYS.

Buchanan,  
Edwards,  
Guy,  
Houston,

Moore,  
Motley,  
Patton,

Stewart,  
Shannon,  
Tilson—10.

Not voting—Ford, Gooch, Ripetoe.

The amendment of Senator Burnett, as substituted by the amendment of Senator Lane, was then adopted.

Section 5 was then adopted.

Senator Edwards offered the following amendment:

Add, after the word "the," line one, section 6, page 5, the words "end of the."

Adopted.

Section 6 was then adopted.

Senator Swain offered the following amendment:

Between the words "regulations" and "for," in line twelve, section 7, insert the words "under the statutes of the State," and pending on adjournment.

The following resolution was offered by Senator McCulloch:

*Resolved*, That in commemoration of the birthday of George Washington and respect to his illustrious fame, the Senate stand adjourned until next Monday morning at 10 o'clock.

The resolution was adopted and the Senate accordingly adjourned.

## THIRTY-SIXTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 24, 1879. }

The Senate met pursuant to adjournment; the president in the chair. Roll called; quorum present. Prayer by chaplain.

On motion of Senator Motley, the reading of the journals of Saturday was dispensed with and the same adopted.

A message was received from the House announcing the passage by that body of substitute for House bill No. 115, entitled "An act to create the thirty-first judicial district of the State of Texas, and to organize the same;" House joint resolution No. 35, "On the subject of Indian depredations in the State of Texas;" and that the House has concurred

in Senate amendments to House bill No. 255, "An act to reorganize the the fourth judicial district of the state, and to fix the times for holding the courts in the different counties composing the same."

Senator Burnett presented the petition of many citizens of Walker county, "asking the passage of a law transferring the civil and criminal jurisdiction of their county court to the district court of said county," stating that the operation of the present county court system has not been satisfactory to the people of their county.

Referred to judiciary committee No. 2.

Senator Stewart presented the memorial of many citizens of Harris county, "asking that Harris county be exempted from the operation of the provisions of the stock law," approved August 23, 1876, entitled "An act to encourage stockraising and for the protection of stockraisers," giving many strong reasons sustaining the justice of their request.

Referred to committee on stock and stockraising.

Also, a memorial from many citizens of Harris county, "asking the passage of a law conferring on the district court of Harris county criminal jurisdiction, and also civil jurisdiction in all cases above \$200 as in all other counties of this state," giving three forcible reasons therefor: First, that it would save \$15,000 per annum to the county; second, that it would greatly relieve the people from oppressive jury duty; and thirdly, that the county is greatly in debt and that it is unjust to have to support an extra judge and clerk, when in every other county in the state, save Galveston, the same duties are performed by one judge and clerk.

Referred to committee on judicial districts.

Also, a memorial from the commissioners' court of Harris county, the county judge voting in the negative, asking that the criminal court of said county be dispensed with; that their district judge is not engaged more than one-fourth of the year in disposing of the business of his court, and has ample time to dispose of all the criminal business of their county besides what should go to the county court in addition to the other business of said district court, even if the number of terms are increased, and they ask that if the change is so made that the number of terms of their judicial district be increased from two to four terms per annum; that by this change many thousand dollars will be saved to the county, besides many more to the state; asking, also, that the commissions and perquisites of the officers of said county should be cut down and reduced to a maximum not exceeding \$2000, exclusive of necessary allowances for deputies, etc.

Referred to committee on judicial districts.

Senator Moore presented a petition from sundry citizens of McLennan county and retail dealers in spirituous liquors, asking that House bill No. 187, entitled "An act to provide for the levy and collection of an occupation tax on the sale of spirituous, vinous and malt liquors in quantities less than a quart, etc.," be not passed, as it discriminates against retail dealers and in favor of wholesale dealers, and also giving many other objections to the bill as viewed from their standpoint.

Referred to committee on finance.

Senator Buchanan presented the petition of Capt. Henry Stout, an old soldier and veteran of the Texas revolution of 1836 and now a citizen of Wood county, first serving in Capt. Benton's company and then in William Beckwell's company, of Gen. Rusk's brigade, asking for a

special act granting him a pension for said services, stating that his proof of service was duly and properly made out and sent to the comptroller's office, but his application was refused; also stating that he is old, infirm and needy, and as his proof is from reliable parties, he hopes his request will be granted.

Referred to committee on finance.

Senator McCulloch presented the memorial from the Robertson county Medical Association in the form of a resolution adopted in their regular meeting, asking the repeal of the occupation tax now imposed upon the medical profession of Texas.

Referred to judiciary committee No. 1.

Senator Stewart, chairman of judiciary committee No. 2, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 72, entitled "An act amendatory of an act entitled 'an act to provide for and regulate mechanics', contractors', builders' and other liens in the State of Texas,'" approved August 7, 1876, and the committee have prepared a substitute therefore, which accompanies this report, and I am instructed to report said substitute to the Senate and recommend that it do pass.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate joint resolution No. 99, entitled "joint resolution giving consent of the state for certain late lessees of the penitentiary to sue the state," and I am instructed by a majority of said committee to report the resolution back to the Senate so amended as to give Nathan Patten, one of said lessees, the right to sue the state, and as thus amended to recommend that the resolution do pass.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 179, entitled "An act to define in what civil cases depositions of witnesses may be taken," and a majority instruct me to recommend the accompanying amendment, and thus amended, that it do pass.

STEWART, *Chairman.*

Add after the last word in section 1; "provided, the failure to secure the depositions of a male witness, residing in the county in which the suit is pending, shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by the service of subpoena or attachment under the rules of law, unless, by reason of age, infirmity, sickness or official duty, the witness will be unable to attend the court; or unless he is about to leave or has left the state or county in which the suit is pending and will not probably be present at the trial.

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 26, entitled "An act to provide for the removal of county offices," and your committee being of the opinion that the Penal Code sufficiently provides for the evil attempted to be remedied by this bill, instruct me to report the bill back to the Senate with the recommendation that it do not pass.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 have had under consideration Senate bill No. 73, entitled "An act to provide for the record of contracts relating to land in a manner that will distinguish separate from community property," and I am instructed by a majority of the committee to report said bill back to the Senate and to recommend that it do pass.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 having considered Senate bill No. 211, entitled "An act to amend chapter 6 of title 15 of the new Penal Code by further defining and punishing the offense of kidnapping," respectfully return the same and recommend its passage.

STEWART, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2 having considered Senate bill No. 213, respectfully return the same with the substitute entitled "An act to amend article 265 of the new Penal Code," and recommend the passage of the substitute.

STEWART, *Chairman.*

The bill and substitute were read the first time.

Senator Houston, chairman of the committee on state affairs, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration memorial No. 38, from the commissioners' court of Young county, and instruct me to report the same back to the Senate with the recommendation that the prayer of memorialists be not granted, your committee being of opinion that the subject matter of said memorial is now before the Legislature by bill.

HOUSTON, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration Senate joint resolution No. 205, authorizing the governor to lease certain grounds belonging to the capitol grounds of the state in the city of Austin, and instruct me to report the same back to the Senate with the recommendation that it do pass.

HOUSTON, *Chairman.*

Senator Martin presented the petition of many citizens of Corsicana, asking that a law be passed or existing laws so amended as to allow all cities and towns of less than ten thousand inhabitants to do away with their city governments and charters by a majority vote of the legal voters within their corporate limits expressed at the ballot box, and that such cities and towns, repudiating their city or town government, may be subjected to the government of the counties in which they are respectively situated, and the citizens thereof be subjected to do road duty inside of the corporate limits of the city or town, etc.

Referred to the committee on counties and county boundaries.

Senator Terrell introduced a bill, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes and for the payment of the public debt."

Read by caption and referred to committee on state affairs.

Senator Stewart introduced a joint resolution, requesting senators and representatives in congress to use their influence in securing a loan from the general government of four battalions of artillery to the adjutant general."

Read and referred to the committee on military affairs.

Senator Houston introduced a bill, entitled "An act specifying the fees of collectors of taxes for sale of real estate for delinquent taxes."

Read by caption and referred to judiciary committee No. 1.

Also, a bill entitled "An act to prevent certain public officers from using their offices to forward their private interests."

Read by caption and referred to judiciary committee No. 2.

Senator Grace offered the following resolution:

*Resolved*, That the committees on enrolled and engrossed bills be authorized to employ such assistance as may be necessary to the speedy transaction of the business of this session whenever the same may be required by a press of business.

Read and adopted.

Senator Burton introduced a bill, entitled "An act to better establish the Agricultural and Mechanical college of Texas, for the benefit of colored youths."

Read and referred to committee on education.

Senator Swain introduced a bill entitled "An act to ascertain the amount due and outstanding against the State of Texas for land purchased by the state under act of August 13, 1870, for the use of public free schools, and for material and labor furnished in building houses for the same prior to the first day of July, 1873, and to provide for the same."

Read by caption and referred to committee on education.

Senator Burnett offered the following resolution:

*Resolved*, That the Senate of Texas has received with profound gratification the generous invitation of his imperial highness, King Momus, to attend his majesty's royal entrance into his noble capital city of Galveston, and that the Senate regrets that the duty it owes to his majesty's most loyal subjects of the state demands that it deny itself the pleasure of accepting his majesty's invitation and of visiting his majesty's most generous and public spirited subjects of the capital city. Long live the king!

The resolution was adopted.

The president, after reading its caption, signed House bill No. 255, entitled "An act to reorganize the fourth judicial district of the State of Texas, and to fix the times for holding courts in the different counties composing the same."

(President *pro tempore* in the chair.)

Senator Houston, chairman of committee on state affairs, by leave, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration Senate bill No. 214, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer, to educational purposes and for the payment of the public debt," and instruct me to report the same back to the Senate with the recommendation that it do pass. I am also instructed to state that it is important that this be passed without delay to prevent irreparable injury to the state, and to further recommend that the rules be suspended and that it be acted upon immediately.

Houston, *Chairman.*

On motion of Senator McCormick, the rules were suspended, unfinished



business postponed for fifteen minutes and Senate bill No. 125, entitled "An act to ratify and declare valid a compromise by the commissioners' court of Brazoria county, and the issuance of county bonds and a levy of a tax therefor, in settlement of bonds of said county, issued under an act of the Legislature passed September 1, 1856, entitled 'an act to permit the county of Brazoria to levy a special tax for purposes of internal improvements and the judgments in the federal court recovered therein,'" was taken up and read first time.

On motion of Senator McCormick the rules were suspended, unfinished business postponed and Senate bill No. 214, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes, and for the payment of the public debt," was taken up and read first time.

Senator Houston moved a suspension of the rules to place the bill on its second reading.

Carried by the following vote:

YEAS.		
Brown,	Hobby,	Motley,
Burnett,	Houston,	Patton,
Burton,	Lair,	Ripetoe,
Duncan,	Ledbetter,	Stewart,
Edwards,	Martin.	Shannon,
Gooch,	McCormick,	Terrell,
Grace,	McCulloch,	Tilson—23.
Guy,	Moore,	

NAYS—none.

Not voting—Buchanan, Davenport, Ford, Lane, Storey, Swain.

Bill read second time and ordered engrossed.

On motion of Senator Houston the rules were still further suspended and bill placed on its third reading by the following vote:

YEAS.		
Buchanan,	Guy,	Moore,
Burnett,	Hobby,	Motley,
Burton,	Houston,	Patton,
Davenport,	Lane,	Ripetoe,
Duncan,	Lair,	Shannon,
Ford,	Ledbetter,	Swain,
Gooch,	McCormick,	Terrell,
Grace,	McCulloch,	Tilson—24.

NAYS—none.

Not voting—Brown, Edwards, Martin, Stewart, Storey.

Bill read third time and passed by the following vote:

YEAS.		
Brown,	Guy,	Motley,
Burnett,	Hobby,	Patton,
Burton,	Houston,	Stewart,
Duncan,	Lair,	Shannon,
Edwards,	Ledbetter.	Swain.
Ford,	McCormick,	Terrell,
Gooch,	McCulloch,	Tilson—23.
Grace,	Moore,	

NAYS—none.

Not voting—Buchanan, Davenport, Lane, Martin, Ripetoe, Storey.

Senator Grace offered the following resolution:

*Resolved*, That 500 copies of the amendments made to the Penal and Civil Codes be printed for the use of this body.

Adopted.

On motion of Senator Shannon, the rules were suspended, the unfinished business postponed for fifteen minutes and Senate bill No. 77, entitled "An act to regulate and control the assessment of taxes on real estate," was taken up and read second time.

Senator Shannon offered the following amendment:

Add, in line 2, section 1, after the word "land," the words "and number of acres therein."

Adopted.

Also the following:

Add to end of section 1, "*provided*, that in case the records of the land office do not show the quantity of acres in a survey, the surveyor of the district shall furnish said assessor a certified statement of the number of acres therein."

Senator Davenport moved to postpone the consideration of the bill and amendments for two days.

Lost.

The pending amendment of Senator Shannon was then adopted.

Senator Duncan offered the following amendment:

Strike out, on page 4, lines four and five, the words "sanctioned by the board of equalization."

Lost by the following vote:

	YEAS.	
Duncan,	Edwards,	Terrell—3.
	NAYS.	
Brown,	Guy,	McCulloch,
Buchanan,	Hobby,	Moore.
Burnett,	Houston,	Motley,
Burton,	Lane,	Patton,
Davenport,	Lair,	Stewart,
Ford,	Ledbetter,	Shannon,
Gooch,	Martin,	Swain,
Grace,	McCormick,	Tilson—24

Not voting—Ripetoe and Storey.

Senator McCormick offered the following amendment:

"*Provided*, the owner or owners of any survey and grant of land may show, by a survey to be made by the county surveyor of the county, that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are, in fact, embraced within the calls of the particular survey and grant."

Adopted.

Senator Tilson offered the following:

Section 2, in line six, page 2, printed bill, after the word "same" insert "and such other stationery as may be necessary."

Adopted and bill ordered engrossed.

A message was received from the House announcing the appointment of Messrs. Coleman, Linn and Bryan as a conference committee on the part of the House on the disagreements of the two Houses on House bill No. 241.

Senator Brown, chairman of the committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined Senate bill No. 69, entitled "An act requiring the owners of land to pay the taxes due thereon before recording their titles thereto;" Senate joint resolution No. 112, in relation to the Agricultural and Mechanical College of Texas; Senate bill No. 180, entitled "An act to amend article 358, chapter 3 of the Penal Code," approved ....., 1879, and report them all correctly engrossed.

BROWN, *Chairman.*

(President in the chair.)

Senator Burnett offered the following resolution:

*Resolved,* That the Senate hold daily evening sessions, beginning at 3 o'clock, and that the evening session be devoted exclusively to business on the president's table in regular order.

Lies over under the rules.

On motion of Senator Gooch, the rules were suspended, unfinished business postponed three minutes and Senate bill No. 183, entitled "An act to amend 'an act to better protect the papers, records and files in the general land office,'" approved June 2, 1873, was taken up and read first time.

On motion of Senator Ford, the rules were suspended, unfinished business postponed twenty minutes and Senate bill No. 143, entitled "An act to attach certain counties therein named to the twenty-fifth judicial district," was taken up and read first time.

Senator Ford moved a further suspension of the rules to place the bill on its second reading.

Carried by the following vote:

YEAS.

Brown	Houston,	Motley,
Burnett,	Lane,	Patton,
Burton,	Lair,	Ripetoe,
Davenport,	Ledbetter,	Stewart,
Edwards,	Martin,	Shannon,
Ford,	McCormick,	Swain,
Gooch,	McCulloch,	Terrell,
Grace,	Moore,	Tilson - 25.
Guy,		

NAYS—none.

Not voting—Buchanan, Duncan, Hobby, Storey.

The bill was read second time and ordered engrossed.

On motion of Senator Ford, the rules were suspended and the bill placed on its third reading by the following vote:

YEAS.

Brown,	Grace,	Moore,
Buchanan,	Guy,	Motley,
Burnett,	Hobby,	Patton,
Burton,	Lane,	Ripetoe,
Davenport,	Lair,	Stewart,
Duncan,	Ledbetter,	Shannon,
Edwards,	Martin,	Swain,
Ford,	McCormick,	Terrell,
Gooch,	McCulloch,	Tilson--27.

NAYS—none.

Not voting—Houston, Storey.

The bill was read third time and passed by the following vote:

YEAS.		
Brown,	Guy,	Moore,
Buchanan,	Hobby,	Motley,
Burton,	Houston,	Patton,
Burnett,	Lane,	Ripetoe,
Davenport,	Lair,	Stewart,
Duncan,	Ledbetter,	Shannon,
Edwards,	Martin,	Swain,
Ford,	McCulloch,	Terrell,
Gooch,	McCormick,	Tilson—28.
Grace,		

NAYS—none.

Not voting—Storey.

On motion of Senator Ford, the rules were suspended, the unfinished business postponed and Senate bill No. 184, entitled "An act to fix the time of holding the district courts of the twenty-fifth judicial district of the State of Texas," was taken up and read first time.

Senator Ford moved to further suspend the rules and place the bill on its second reading.

Carried by the following vote:

YEAS.		
Brown,	Guy,	Moore,
Buchanan,	Hobby,	Motley,
Burnett,	Houston,	Patton,
Burton,	Lane,	Ripetoe,
Davenport,	Lair,	Stewart,
Duncan,	Ledbetter,	Shannon,
Edwards,	Martin,	Swain,
Ford,	McCormick,	Terrell,
Gooch,	McCulloch,	Tilson—28.
Grace,		

NAYS—none.

Not voting—Storey.

Bill read second time and ordered engrossed.

On motion of Senator Ford, the rules were further suspended to place the bill on its third reading by the following vote:

YEAS.		
Brown,	Grace,	Moore,
Buchanan,	Guy,	Motley,
Burnett,	Houston,	Patton,
Burton,	Lane,	Ripetoe,
Davenport,	Lair,	Stewart,
Duncan,	Ledbetter,	Shannon,
Edwards,	Martin,	Swain,
Ford,	McCormick,	Terrell,
Gooch,	McCulloch,	Tilson—27.

NAYS—none.

Not voting—Hobby, Storey.

Bill read third time and passed by the following vote:

YEAS.		
Brown,	Edwards,	Houston,
Buchanan,	Ford,	Lane,
Burnett,	Gooch,	Lair,
Burton,	Grace,	Ledbetter,
Davenport,	Guy,	Martin,
Duncan,	Hobby,	McCormick,

McCulloch,  
Moore,  
Motley,  
Patton,

Ripetoe,  
Stewart,  
Shannon,

Swain,  
Terrell,  
Tilson—28.

NAYS—none.

Not voting—Storey.

On motion of Senator Patton, Senator Stewart was excused until Monday next.

On motion of Senator Gooch, the rules were suspended, the unfinished business postponed and Senate bill No. 186, entitled "An act requiring railway companies to stop their trains at the boundary line of the state for a certain length of time," and substitute for Senate bill No. 12, entitled "An act to regulate railroad companies and dealers with them, and to provide a remedy for persons injured thereby, and to provide a punishment for violations of this act," were taken up and recommitted to the committee on internal improvements.

(Senator Ledbetter in the chair.)

On motion of Senator Duncan, the rules were suspended, unfinished business postponed for five minutes and Senate bill No. 19, entitled "An act to authorize the levy and collection of a special tax in counties where it may be necessary to construct or to complete, or to complete payment for court houses and jails," was taken up, read second time and ordered engrossed.

The pending business, being Senate joint resolutions Nos. 5 and 102, proposing amendments to article 5 of the state constitution, was then taken up for consideration.

(President in the chair.)

The amendment of Senator Swain was pending on adjournment.

Senator Brown offered the following amendment as a substitute for the amendment of Senator Swain:

Amend section 7, by adding the following: "Subject to revision by the Legislature."

(Senator Ledbetter in the chair.)

Senator Brown withdrew his substitute and offered the following as an amendment for Senator Swain's amendment:

Add after the last word in section 7 the words "not inconsistent with the constitution or laws of the state."

Adopted by the following vote:

YEAS.

Brown,  
Burnett,  
Burton,  
Davenport,  
Edwards,  
Ford,

Gouch,  
Hobby,  
Houston,  
Martin,  
McCormick,  
McCulloch,

Moore,  
Motley,  
Ripetoe,  
Stewart,  
Storey,  
Terrell—18.

NAYS.

Buchanan,  
Duncan,  
Grace,  
Guy,

Lane,  
Lair,  
Ledbetter,  
Patton,

Shannon,  
Swain,  
Tilson—11.

(President in the chair.)

Senator Brown moved to amend his substitute by inserting it after the word "regulation" in line twelve, instead of ahead of section as at first proposed.

Adopted.

The amendment of Senator Swain, as substituted by the amendment of Senator Brown, was then adopted by the following vote:

## YEAS.

Brown,  
Burnett,  
Burton,  
Davenport,  
Gooch,  
Grace,  
Guy,  
Houston,

Lane,  
Lair,  
Ledbetter,  
Martin,  
McCormick,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Stewart,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—24.

## NAYS.

Buchanan,  
Duncan,

Edwards,

Hobby—4.

Not voting—Ford.

Section 7 was then adopted.

Senator Brown, chairman of committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined Senate bill No. 121, entitled "An act supplemental to and amendatory of an act to enable part owners of land to obtain partition thereof, and for other purposes," passed March 5, 1840; also, Senate bill No. 214, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes, and for the payment of the public debt," and find them correctly engrossed. BROWN, *Chairman.*

Senator Lane, by leave, introduced a joint resolution proposing an amendment to article 16 of the constitution of the State of Texas.

Referred to committee on constitutional amendments.

Senator Stewart, chairman of judiciary committee No. 2 (by leave), submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 2, to whom was referred Senate bill No. 23, "An act to diminish the civil and criminal jurisdiction of the county court of Polk county, and to conform the jurisdiction of the district court of said county to such change," have instructed me to report the bill back to the Senate with the remark that the proper notice was given of the introduction of the bill in accordance with law and to recommend its passage. STEWART, *Chairman.*

The following message, received from his excellency the governor, was taken up and read:

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 24, 1879. }

*To the honorable the Senate and House of Representatives in Legislature assembled:*

I herewith submit to you a special message supplemental to that which was sent in on the twenty-first instant, relating to the estimated deficiencies in the current revenue, as shown by the comptroller, for the purpose of exhibiting the deficiencies in other departments not therein included.

From the adjutant general's office there is reported to me a deficiency, at present, of \$46,200 06, as shown by the letter of the adjutant general, John B. Jones, herewith annexed.

There is also a deficiency in the printing account, under the control of the printing board, at the present time, of \$18,369 50.

These two items, amounting to \$64,578 56, added to the estimated present deficiency in the comptroller's report of \$360,108, makes the estimated present deficiency amount to the sum of \$424,686 56.

The estimate of the cost of printing laws, etc., up to August 31, 1879 is the sum of \$19,000.

The estimate of the cost of printing the codes that must be provided for this Legislature is \$22,150.

These two items make an additional deficiency for August 31, 1879, not embraced in the comptroller's report, of \$41,150.

These estimates are exhibited in the letter of the clerk of the printing board, W. D. Moore, herewith annexed.

The addition thus shown of \$64,578 56 to the present deficiency and \$41,150 to the deficiency at the end of the fiscal year will make it, on August 31, 1879, amount to the sum of \$542,918 19, being \$105,728 56 more than the amount estimated by the comptroller from the information in his office, as exhibited in the special message of February 21.

Should the Legislature appropriate any amount for the improvement of the penitentiaries, and of the charitable institutions, and of the agricultural and mechanical college, that amount would be added to the \$542,918 19.

The difficulty found in arriving at anything like accurate information concerning the financial condition of the state suggests the propriety of a law being passed, which I respectfully recommend, requiring all persons having claims against the government for services or otherwise, incurred under any law, to present them to the officer or board for examination or approval, as required by the statute relating to them, and report them to the comptroller, if approved, on or before the first day of each regular session of the Legislature, provided the claims accrued one month before said session, and upon failure to thus present and report the claims they shall be postponed to the next session of the Legislature, or be barred from payment entirely, as the Legislature may think proper.

This large deficiency thus ascertained and exhibited, present and prospective, demands the most serious attention of the Legislature.

I see no way out of the overwhelming embarrassment, in which it involves the finances of the state, but by borrowing \$200,000, by issuing bonds, which is the limit allowed by the constitution, to extinguish a deficiency at any one time; by retrenching expenses as far as practicable; by increasing the subjects of taxation in a manner least injurious to the business of the country; by decreasing the interest on the bonded debt, through the negotiation of bonds of a less rate of interest; and by a prompt sale of the public lands, to pay as fast as possible any and all debts of any sort that the state may own at the time of their sale.

The reason why I recommend the issuing of bonds to the extent of \$200,000 to pay that amount of the deficiency is, that the people can better pay the interest on that amount than to be now taxed to pay the principal, and the deficiency of over \$500,000 can not be met during the next two years by any practical retrenchment of expenses and by any increase of the subjects of taxation without an increase of taxation over fifty cents ad valorem to pay the interest on the bonded debt.

The reason why I recommend the issuing of bonds of less rate of interest sufficient to pay off or purchase in our bonds bearing six,

seven and ten per cent. interest, is that it will very soon be a large saving of interest and consequently a relief in the taxation upon the people necessary to pay the interest upon our bonded debt. We can, it is believed, now negotiate five per cent. bonds at par, and should not, therefore, issue bonds of a higher rate of interest for any purpose whatever. There is now a large amount of money seeking safe investment at a low rate of interest; that, with returning prosperity and confidence, will find other investments than in bonds, which makes the present opportunity favorable for a reduction of the interest on our bonded debt to a uniform standard of five per cent. as soon as practicable.

There is no good reason, as I think, why we should not at once and in one act provide for issuing such bonds for an amount sufficient to answer all the purposes here indicated, which amount may be easily ascertained by reference to the report of the comptroller submitted to this Legislature, and to the report of the deficiency, which shows the necessity for issuing bonds to the amount of \$200,000. Any half-way measures, it is feared, will but complicate our financial condition, and may fail to give the necessary relief that is certainly attainable by a comprehensively devised and practical effort. Though by this policy, if found practicable, the bonded debt would be increased, the interest would be diminished and the people would to that extent be relieved from taxation to pay it.

The reason why I recommend a prompt sale of the lands, is that any means derived therefrom may be used, if appropriated by the act authorizing the sale, to the payment of the floating debt, which now seems inevitable to some extent as well as our bonded debt, if a sale should be found to be practicable.

If these measures should not be deemed proper by the Legislature, and others, suggested by their wisdom, should not be adopted sufficient to give relief from the financial embarrassment of this large deficiency, then we are reduced to the alternative of taxing the people an additional amount over fifty cents ad valorem, which is permitted by the constitution, to pay the interest on the bonded debt, or to drag the government along upon a credit, under a load of deficiency, which will bring down the warrants issued from the treasury during the next two years to an amount of depreciation that will be an onerous tax upon all those who may obtain them for services or otherwise, to the discredit of the administration of the government. This would exhibit, under the operation of the existing laws, the sacrifice of the interest of all those who are actively engaged in carrying on and furnishing the means to carry on, the actual government, in order to make prompt payment of compensation in full to common school teachers, and of interest in full to our bonded creditors, both of whom are paid, whether there is any money left in the treasury to pay anybody else or not.

Such a policy, persisted in, is a violation of the rules of reason and common sense, when applied to government, as much as it would be to keep constantly a family half starved in order to send the children to school, and to pay debts extravagantly contracted. The administration of an economical and efficient government being the imperious necessity and prime object in the protection of society, those who faithfully devote their time, their labor and their means to carry it on should be the preferred creditors and should be first paid in this or any other government.



The legislators usually are preferred, because they have the power to make themselves preferred creditors for their services, and the same reason, though not the same power, applies equally to other officers and agents whose services are equally necessary in the proper administration of the government. Under existing laws, under the restrictions and limitations of the present constitution, and under the present condition of our finances, this Legislature may not have the power, if it is desired, to make its members preferred creditors, but they will have to sell their warrants at a sacrifice as other officers do, unless they pass a law requiring their own warrants to be paid at the treasury out of the current available revenue as it comes in during the session to the exclusion of other warrants that may be presented for payment.

I respectfully refer you to general laws of 1874, section 7, page 15, section 4, page 208, and of 1876, section 8, page 42, and other acts authorizing the issuing of bonds, together with article 12, section 23 of the constitution of 1869, by which the faith of the state is pledged to the provision made for the punctual payment of the interest and for the reservation of a sinking fund for the ultimate payment of the principal on the bonds, and also to the laws passed at the session of the Fifteenth Legislature in 1876 relating to the free common schools and the collection and apportionment of taxes, giving the available fund for free common schools preference in payment, by which it will be seen, as I have stated, teachers and bond creditors are given the first proceeds of the current revenue collected by taxes every year. O. M. ROBERTS.

ADJUTANT GENERAL'S OFFICE, STATE OF TEXAS, }  
AUSTIN, February 21, 1879. }

To His Excellency O. M. Roberts, Governor of the State of Texas :

SIR—In reply to your inquiry of this date, I have the honor to inform you that the deficiency for Capt. J. L. Hall's company of special state troops is forty-six thousand, two hundred and nineteen dollars (\$46,219), for which vouchers have been approved, "subject to an appropriation by the Legislature," and that \$400 or \$500 would cover the amount of vouchers which have not yet been presented for approval.

Very respectfully,  
Your obedient servant,  
JOHN B. JONES, Adjutant General.

OFFICE SECRETARY OF STATE, }  
AUSTIN, February 22, 1879. }

Statement of deficiency in printing and estimates required for printing for two years:

DEFICIENCY.	
For year ending August 31, 1877 .....	\$1,313 85
For year ending August 31, 1878 .....	7,166 66
From September 1, 1878, to February 22, 1879 .....	9,078 99
Estimated amount of valid outstanding claims contracted from September 1, 1876, to February 22, 1879 .....	810 00
	\$18,369 50

Estimated amount required for printing for two years:	
From March 1, 1879, to August 31, 1879 (including allowance of \$5,000 for translating and printing the general laws, German and Spanish) .....	\$19,000 00
From September 1, 1879, to August 31, 1880 (allowing \$2,000 for printing reports of departments).....	12,000 00
From September 1, 1880, to March 1, 1881.....	7,000 00
	\$38,000 00

1. Note—In the deficiency is included the sum of \$560 43 for printing the message of Gov. Hubbard, which, it is thought, should go as current printing of the Sixteenth Legislature. Deduct this sum and the deficiency will be \$17,809 00.

2. Note—No allowance is made in amount required for next two years for printing revised statutes. Estimates on this work will be furnished whenever wanted if data is furnished as to number of copies, style, etc.

Respectfully submitted,

W. D. MOORE, *Clerk Printing Board.*

Estimate for printing 10,000 copies of revised statutes:	
Composition at 74c.....	\$3,100 00
Presswork at 50c.....	2,250 00
Paper, 51,800 pounds, at 16c.....	8,300 00
Binding 10,000 copies at 85c.....	8,500 00
	\$22,150 00

1. Note—Estimates for 5000 copies:

Composition at 74c.....	\$3,100 00
Presswork at 60c.....	2,700 00
Paper at 17c.....	4,400 00
Binding at 90c.....	4,000 00
	\$14,700 00

2. Note—The edition of O. & W.'s digest was 5000, and the appropriation \$20,000.

3. Note—If the state will purchase material and have electrotyped this work, a considerable item could be saved by issuing small editions as needed, thus avoiding interest and wastage on large edition to begin with.

#### SUMMARY.

Deficiency .....	\$18,369 50
Amount required to March 1, 1881.....	38,000 00
Amount required for revised statutes .....	22,150 00
	\$78,519 50

Respectfully submitted,

W. D. MOORE, *Clerk of Printing Board.*

On motion of Senator Davenport, 1000 copies of the message which had just been read were ordered printed, and the message, with others heretofore printed, were to be referred to appropriate committees.

Senator Swain moved to adjourn until to-morrow at 10 A. M.

Carried by the following vote:

YEAS.		
Brown,	Lair,	Ripetoe,
Buchanan,	Ledbetter,	Stewart,
Burnett,	Martin,	Shannon,
Burton,	McCormick,	Storey,
Davenport,	McCulloch,	Swain,
Guy,	Moore,	Terrell,
Hobby,	Motley,	Tilson—23.
Houston,	Patton,	
NAYS.		
Duncan,	Gooch,	Grace—4.
Edwards,		
Not voting—Ford and Lane.		

### THIRTY-SEVENTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 25, 1879. }

The Senate met pursuant to adjournment; president in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Tilson, the reading of the journals of yesterday was dispensed with and the same adopted.

A message was received from the House announcing the passage by that body of Senate bill No. 214, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes and for the payment of the public debt; House bill No. 15, entitled "An act for relief of all persons whose lands have been sold for taxes and bought in by the state;" House joint resolution No. 24, entitled "Joint resolution in regard to Pelican Island," and substitute for House joint resolution No. 2, amending article 8 of the constitution of the State of Texas, by adding a new section to be section 19.

Senator Davenport presented the petition of numerous citizens of Brown county, "asking that the contemplated new county of Mills, to be formed from the territory of the present counties of Brown, Lampasas, Hamilton and Comanche be not created," and giving many reasons for their request.

Referred to committee on counties and county boundaries.

Senator Patton presented the petition of many citizens of the town of Gonzales, in Gonzales county, "asking that the Legislature repeal the act of their incorporation and place the town under the immediate government of the county authorities, for the reasons mainly that their charter powers are too great and the government under it too expensive," etc.

Referred to judiciary committee No. 2.

Senator Houston, chairman of the committee on state affairs, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration House bill No. 8, entitled "An act for the preservation of oysters and oyster beds and protecting the rights of persons to use same," and instruct me to report it back to the Senate with the recommendation that it do pass.

HOUSTON, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on state affairs have had under consideration petition No. 49, from the citizens of Madison county, asking the enactment of a Sunday law, and instruct me to report the same back to the Senate with the statement that in the opinion of your committee any further legislation on the subject would be unwise.

Houston, *Chairman.*

Senator Lane, chairman of the committee on public lands, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public lands and land office, having considered Senate bill No. 151, entitled "An act to encourage the construction of artesian wells," respectfully return the same and recommend its passage.

Lane, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public lands and land office, have had under consideration Senate bill No. 52, entitled "An act to protect the rights of pre-emption settlers who have heretofore or may hereafter enlist in the frontier battalions or other military forces of the state," instruct me to report the same back to the Senate with the recommendation that it do pass.

Lane, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public lands have had under consideration Senate bill No. 166, entitled "An act requiring the commissioner of the general land office to issue patents to parties purchasing university lands in accordance with the original subdivisions made under the act approved August 30, 1856," and instruct me to report it back and recommend that it do pass.

Lane, *Chairman.*

Senator Edwards, chairman of committee on constitutional amendments, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on constitutional amendments, to whom was referred Senate joint resolution No. 220, "proposing an amendment to article 16 of the constitution of the state," after considering the same, a majority of your committee have instructed me to report it back and recommend its passage.

Edwards, *Chairman.*

The undersigned senators submitted the following minority report:

*Hon. J. D. Sayers, President of the Senate:*

The undersigned, a minority of your committee on constitutional amendments, respectfully dissent from the views of the majority of the committee recommending submitting to the people as a separate proposition an amendment of the constitution requiring the sessions of the supreme court to be held at the capital only. In 1845 the people, by constitutional provision, authorized the sessions of this court to be held "at not more than three places in the state." In 1866 the provision was continued, with the qualification that one of the places should be the capital. "The supreme court shall sit \* \* \* at the capital and at not more than two other places in the state." In 1869, when a large part of the people were not permitted to vote, the provision on this subject was changed so as to read: "The supreme court shall hold its sessions annually at the capital of the state." As soon as the people of

the state were fully restored to the exercise of the suffrage franchise, the constitution of 1869 was, by amendment, so changed in this particular as to permit, if not require, the sessions of this court to be held at the capital and not more than two other places in the state.

Again in 1875 the people passed upon this question by direct action and provided that "the supreme court shall sit at \* \* the seat of government and at not more than two other places in the state." The amendment proposed, if adopted, would not settle the question, as this resume shows, and if not adopted would not either legally or logically withdraw the question from legislative consideration. We therefore recommend that the resolution proposing said amendment be not passed.

McCORMICK,  
DUNCAN,  
TILSON.

Senator Grace, chairman of committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on military affairs have had under consideration Senate joint resolution No. 215, and I am instructed to report the same back recommending its passage.

GRACE, *Chairman.*

Senator Swain, from judiciary committee No. 1, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1, to whom was referred Senate bill No. 142, "An act to regulate the admission and practice of attorneys and counselors at law," have had the same under consideration and instruct me to report it back to the Senate with the recommendation that it should become a law.

SWAIN, *for Committee.*

Senator Terrell, chairman of judiciary committee No. 1, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1 have carefully considered Senate bill No. 190, to be entitled "An act to amend chapter 17 of the Penal Code of the State of Texas," and instruct me to report it back with the accompanying substitute and recommend the passage of the substitute.

TERRELL, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1 have duly considered Senate bill No. 146, to be entitled "An act prohibiting the sale of liquor to inebriates and habitual drunkards and the sale of the same on the Sabbath between the hours of 8 o'clock A. M. and 6 o'clock P. M.," and, as the objects sought to be accomplished by this bill are fully covered by the terms of a bill now pending on the same subject, instruct me to report it back with the recommendation that it do not pass.

TERRELL, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1, to whom was recommitted Senate bill No. 46, to be entitled "An act to provide for the election of district attorneys in certain judicial districts of the State of Texas," and amendments offered thereto in the Senate, have again considered the bill in connection with the proposed amendments, and the members of the committee

present being unanimously of the opinion that by sections 22 and 23, article 16, and section 21, article 5 of the constitution, no power exists in the Legislature to exempt particular counties from the operation of the law, instruct me to report the bill and said amendments back, stating that they adhere to their former recommendation, and recommend that the bill as originally reported do pass. TERRELL, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1, to whom was referred Senate bill No. 199, to be entitled "An act to amend an act supplementary to 'an act of limitations,'" approved February 5, 1841, have duly considered the same and instruct me to report it back with the recommendation that the bill do not pass. TERRELL, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1 have carefully considered Senate bill No. 81, to be entitled "An act to amend section 15 of an act entitled 'an act to organize the district courts, and to define their powers and jurisdiction,'" approved May 11, 1846, and instruct me to report the bill back with the recommendation that it do not pass. TERRELL, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1 have carefully considered Senate bill No. 195, to be entitled "An act to punish persons for erecting fences in this state made wholly of barbed wire," and instruct me to refer it back with the accompanying amendment, and recommend that as amended that the bill do pass. TERRELL, *Chairman.*

Amendment: After the word "to" in the fourth line of section 1 insert the word "hereafter."

*Hon. J. D. Sayers, President of the Senate:*

Your judiciary committee No. 1 have had under consideration Senate bill No. 207, entitled "An act supplementary to and amendatory of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,'" which relates to county boundaries, and instruct me to report it back and recommend the passage of the bill. TERRELL, *Chairman.*

Senator Grace, chairman of committee on enrolled bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on enrolled bills have carefully examined and find correctly enrolled and properly signed Senate bill No. 214, "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes and for the payment of the public debt," and this day at 10:10 A. M. presented the same to the governor for his signature. GRACE, *Chairman.*

Senator Shannon, chairman of committee on internal improvements, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on internal improvements, to whom was referred Senate bill No. 186, entitled "An act requiring railroad companies to stop their trains at the boundary line of the State for a certain length of time," have had the same under consideration, and I am instructed to report it back to the Senate and recommend its passage. SHANNON, *Chairman.*

The president after reading its caption signed Senate bill No. 214, entitled "An act to set aside the public lands embraced within the territorial limits of the county of Greer to educational purposes and for the payment of the public debt."

Senator Davenport introduced a bill entitled "An act to provide for the advertisement of judicial sales."

Read by caption and referred to judiciary committee No. 1.

Senator Swain introduced a bill entitled "An act to provide for furnishing and utilizing the East Texas penitentiary and making an appropriation therefor."

Read by caption and referred to committee on penitentiary.

Senator Shannon introduced a bill entitled "An act to validate bounty certificate of Joseph Hawkins."

Read by caption and referred to committee on private land claims.

Senator Buchanan introduced a bill entitled "An act to amend article 539, of section 2, of an act entitled 'an act to adopt and establish a penal code and a code of criminal procedure for the State of Texas.'"

Read by caption and referred to judiciary committee No. 1.

Senator Burnett introduced a bill entitled "An act to diminish the civil and criminal jurisdiction of the county court of Trinity county and conform the jurisdiction of the district court of said county to said change."

Read by caption and referred to judiciary committee No. 2.

Senator Patton introduced a bill entitled "An act to repeal an act entitled 'an act to amend and consolidate the several acts incorporating the town of Gonzales,' approved March 6, A. D. 1873, and to provide for the turning over of the books, papers, records and tax rolls of said corporation to the commissioners' court of Gonzales county, and to authorize the said commissioners' court to collect the taxes levied and due said corporation for the years 1876, 1877 and 1878, and to authorize and empower the said commissioners' court to levy a tax upon the citizens living within the limits of said corporation, for the year 1879, to pay off and satisfy the outstanding indebtedness of said corporation."

Read by caption and referred to judiciary committee No. 2.

Senator McCormick introduced a bill entitled "An act to authorize the commissioner of the general land office to cancel titles and patents issued on titled or patented lands and issue certificates for the amount covered by the older titles or patents."

Read by caption and referred to committee on land office.

Also, "An act to provide a mode for colonists and other persons, their heirs and assigns justly entitled to lands in this state under any laws of the government of Mexico or of the Republic of Texas, or of the State of Texas, who, from any cause, have not obtained the same heretofore, to have certificates issued therefor, and have the same approved and patented."

Senator McCulloch introduced a joint resolution proposing an amendment to the constitution to establish a department of health and a board for pardons.

Referred to committee on constitutional amendments.

Senator Ledbetter offered the following resolution:

WHEREAS, There are many indigent lunatics in the various counties of this state that have not been admitted into the lunatic asylum, for want of sufficient accommodation, and who are now supported by the counties, when it is made the duty of the state by section 54, article 16 of the

constitution to provide for the custody and maintenance of indigent lunatics; therefore,

*Resolved*, That the finance committee be instructed to ascertain how much is due the several counties in the state for the support and maintenance of indigent lunatics, and report a bill appropriating a sufficient amount to reimburse the counties the amounts thus expended.

Resolution referred to committee on finance.

Senator Burnett's resolution of yesterday with regard to holding evening sessions was taken up.

Senator Patton moved a division of the question, which was granted.

The first proposition "to hold evening daily sessions beginning at 3 o'clock P. M.," was adopted by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Duncan,  
Edwards,  
Grace,  
Hobby,

Lane,  
Lair,  
Martin,  
McCulloch,  
Moore,

Patton,  
Ripetoe,  
Stewart,  
Swain,  
Tilson—16,

## NAYS.

Brown,  
Burton,  
Davenport,  
Gooch,

Guy,  
Houston,  
Ledbetter,  
McCormick,

Motley,  
Storey,  
Terrell—11.

Not voting—Shannon, Ford.

The second part of the resolution, "that the evening sessions be devoted exclusively to business on the president's table in regular order," was adopted by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Grace,

Guy,  
Houston,  
Lair,  
Lane,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Motley,  
Ripetoe,  
Shannon,  
Storey,  
Swain—20.

## NAYS.

Brown,  
Gooch,  
Hobby,

McCormick,  
Patton,  
Stewart,

Terrell,  
Tilson—8.

Not voting—Ford.

The following House bills and resolutions were taken up and referred to appropriate committees:

Substitute for House bill No. 151, entitled "An act to create the thirty-first judicial district of the State of Texas, and to organize the same."

Referred to committee on judicial districts.

House joint resolution No. 35, "Joint resolution on the subject of Indian depredations in the State of Texas."

Referred to committee on Indian affairs and frontier protection.

On motion of Senator Motley, the secretary of the Senate, Major Leigh Chalmers, was excused until next Saturday week.

On motion of Senator Grace, the rules were suspended, the pending business postponed ten minutes, and Senate joint resolution No. 215, "Requesting senators and representatives in congress to use their influence in receiving the loan from the general government of four bat-



teries of artillery to the adjutant generals," was taken up and read first time.

On motion of Senator Grace, the rules were suspended and joint resolution placed on its second reading by the following vote:

YEAS.		
Buchanan,	Guy,	Motley,
Burnett,	Hobby,	Patton,
Burton,	Houston,	Stewart,
Davenport,	Lane,	Shannon,
Duncan,	Lair,	Storey,
Edwards,	Ledbetter,	Swain,
Ford,	Martin,	Terrell,
Gooch,	McCormick,	Tilson—26.
Grace,	McCulloch,	
	NAYS—Brown.	

Not voting—Moore, Ripetoe.

Resolution read second time and ordered engrossed.

Senator Grace moved to still further suspend the rules to place the resolution on its third reading.

Carried by the following vote:

YEAS.		
Buchanan,	Guy,	Motley,
Burnett,	Hobby,	Patton,
Burton,	Houston,	Stewart,
Davenport,	Lane,	Shannon,
Duncan,	Lair,	Storey,
Edwards,	Ledbetter,	Swain,
Ford,	Martin,	Terrell,
Gooch,	McCormick,	Tilson—26.
Grace,	McCulloch,	
	NAYS—Brown.	

Not voting—Moore, Ripetoe.

Resolution read third time and passed by the following vote:

YEAS.		
Buchanan,	Hobby,	Motley,
Burnett,	Homan,	Patton,
Burton,	Houston,	Stewart,
Davenport,	Lane,	Shannon,
Duncan,	Lair,	Storey,
Edwards,	Ledbetter,	Swain,
Gooch,	Martin,	Terrell,
Grace,	McCormick,	Tilson—26.
Guy,	McCulloch,	
	NAYS—Brown.	

Not voting—Ford, Moore, Riptoe.

On motion of Senator McCormick, the rules were suspended, pending business postponed and Senate bill No. 125, entitled "An act to satisfy and declare valid a compromise by the commissioners' court of Brazoria county and the issuance of county bonds and levy of tax therefor in settlement of bonds of said county issued under an act of the Legislature passed September 1, 1856," etc., was taken up, read second time and ordered engrossed.

On motion of Senator Swain, the rules were suspended, pending business postponed fifteen minutes and House bill No. 217, entitled "An act to release certain inhabitants in the county of Lamar, in this state, from the payment of taxes assessed and now due for the year 1878, in conse-

quence of a great public calamity," was taken up and read second time, with an adverse report of the committee.

Senator Brown moved to further postpone the pending business.

Lost, and the unfinished business being substitute for Senate joint resolutions Nos. 5 and 102, proposing amendments to article 5 of the constitution, was taken up.

Section 8 of the amendment was then considered.

(Senator Motley in the chair.)

Senator Ripetoe offered the following amendment:

Strike out section 8.

Lost by the following vote:

	YEAS.	
Burnett,	Burton,	Ripetoe--3.
	NAYS.	
Brown,	Houston,	Motley,
Davenport,	Lane,	Patton,
Duncan,	Ledbetter,	Stewart,
Edwards,	Martin,	Storey,
Ford,	McCormick,	Swain,
Gooch,	McCulloch,	Terrell,
Guy,	Moore,	Tilson--22.
Hobby,		

Not voting—Buchanan, Grace, Lair, Shannon.

Section 8 was then adopted.

Senator Lane offered the following amendment to section 9:

Amend by striking out section 9 and inserting the following:

"The state shall be divided into convenient judicial districts, and for each there shall be appointed a judge by the supreme court, upon the knowledge of the members thereof of the merit and fitness of the individual, and the Legislatore shall pass laws making it an offense for any person either directly or indirectly, for himself or another, to solicit such appointment from said court. The district judge shall have the qualifications of a vote in the district at the time of his appointment; shall receive an annual salary of not less than two thousand five hundred dollars, which shall not be increased or diminished during his term of service, and shall hold a term of court in each county in the district at least twice a year in such manner as shall be prescribed by law, and shall hold his office for the term of four years."

Senator Martin moved a call of the Senate.

Call sustained.

Roll called; absent—Buchanan, Swain.

Senator Storey moved to excuse Senator Buchanan.

Senator Martin moved to suspend the call.

Call suspended.

Senator Shannon offered the following as a substitute for the amendment of Senator Lane:

Strike out of section 9 all between the words "be," in line twenty-five and "a" in line twenty-six, and insert "elected by the qualified electors for members of the Legislature."

In line twenty-seven strike out "appointment" and insert "election."

The following message was received from his excellency the governor:

(President in the chair.)

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 25, 1879. }

*To the honorable Senate in session assembled :*

GENTLEMEN—I respectfully ask your advice and consent to the following appointment, to wit: T. L. Nugent to be the district judge of the thirtieth judicial district of the State of Texas.

Respectfully,

O. M. ROBERTS, *Governor.*

On motion of Senator Davenport, the Senate went into executive session by a unanimous vote.

(In Senate.)

Senator Davenport moved to spread upon the Senate journals the action of the Senate in executive session, except the motions, votes, etc., of the members.

Adopted.

The secretary is instructed to inform his excellency the governor, that the Senate does advise and consent to his appointment of T. L. Nugent as judge of the thirtieth judicial district of the state.

(Senator Burnett in the chair.)

Senator Swain offered the following amendment as a substitute for the pending amendments:

Judiciary—Article 5, section 1. The judicial power of the State of Texas shall be vested in one supreme court, and in such inferior courts as the Legislature may from time to time establish. The judges, both of the supreme and inferior courts, shall hold their offices for four years, and shall at stated times receive for services a compensation which shall not diminish during their continuance in office, and shall have such jurisdiction as may be established by law.

Senator Edwards made the point of order that Senator Swain's substitute was an amendment in the third degree, and as such, was out of order.

Point of order sustained.

(President in the chair.)

On motion of Senator Terrell, Senator Gooch was excused for the evening.

The following messages was received from his excellency the governor, which were taken up and read:

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 25, 1879. }

*To the honorable Senate of the State of Texas :*

GENTLEMEN—I respectfully ask your advice and consent to the following appointments in the counties composing the thirteenth senatorial district, to wit:

Alfred H. Benners, W. F. Cummins, H. B. Strange, J. E. Wolf, J. C. Ruple, W. H. Price, Franklin Field, John M. McCoy, Wm. Harris, James H. Swindells, Lewis H. Taylor, W. A. Sims, R. A. Roberts, E. G. Bower, J. W. Thompson, C. B. Wellborn, Charles F. Tucker, Richard Morgan, R. W. Goldthwaite and A. K. Work, to be notaries public in Dallas county.

A. Rainey, S. C. McCormick, C. L. Edwards R. H. Cook, R. M. Wyatt, G. P. Powell, R. D. Ap Rice, John Wiley, W. T. M. Dickson,

V. Sevier, John L. Cheek, Alex. Mosely, R. G. Phillips, W. V. Waldrop and J. M. Dickson, to be notaries public in Ellis county.

O. M. ROBERTS, *Governor.*

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 25, 1879. }

*To the honorable Senate of the State of Texas :*

GENTLEMEN—I respectfully ask your advice and consent to the following appointments in the counties composing the third senatorial district, to wit:

S. P. Page, Thos. G. Allison, H. Fykes, T. A. Lawrence, J. T. Lacy, D. Z. Gammage, T. A. Codenhead, W. M. Donaldson, to be notaries public in Panolo county.

James P. Ross, L. D. Stephens, W. P. Devereaux, M. W. Pierson, Dallas Foreman, James G. Garrison, W. B. Garrison, Bentley Hollingsworth, T. H. Still, L. J. Hendrick, to be notaries public in Rusk county.

J. M. Hairgrove, Tom. C. Davis, James P. Payne, D. M. Short, R. L. Parker, Oliver Martindale, to be notaries public in Shelby county.

Respectfully, O. M. ROBERTS, *Governor.*

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, February 25, 1879. }

*To the honorable Senate of the State of Texas :*

GENTLEMEN—I respectfully ask your advice and consent to the following appointments, to wit:

Joseph Cole, J. Y. Hawkins, John Z. Wade, H. N. Spooner, Jessie Hays, J. J. Elliott, Thomas B. Love, to be notaries public in Hill county.

James M. Odell, W. F. Ramsey, G. H. Maxey, S. B. Killough, B. B. House, J. F. Golden, W. J. Driver, Wm. Scarlock, Phil. T. Allen, J. R. McKensie, A. N. Wilbank, N. W. Grant, C. Z. Kouns, J. H. Logan, Warren Rutledge, to be notaries public in Johnson county.

Thomas A. Blair, Felix H. Robertson, W. S. Baker, John T. Walton, M. Suratt, E. A. McKinney, D. C. McCoun, J. W. Speight, Thomas L. McGhee, Thomas C. Smith, R. G. Pedcocke, T. D. Penry, D. A. Kelly, T. B. Cox, Thomas P. Kelly, Wm. L. Prather, James I. Moore, L. N. Bruce, W. W. Evans, to be notaries public in McLennan county.

Respectfully, O. M. ROBERTS, *Governor.*

EXECUTIVE OFFICE, }  
AUSTIN, February 25, 1879. }

*To the honorable Senate of the State of Texas :*

GENTLEMEN—I respectfully ask your advice and consent to the following appointments of notaries public from the seventh senatorial district:

J. E. Robinson, W. H. Acker, T. F. Donnels, P. L. Minshew, Bailey Barton, Pittsburg, Camp county; W. D. Cudille, Leesburg, Camp county.

Robt. M. Keasler, John F. Witherspoon, L. L. Teague, Longview, Gregg county; John T. Kilgore, Kilgore, Gregg county.

Martin Jernigan, Troupe, Smith county; Jeff. D. Burnes, L. A. Secrest, N. W. Finley, John H. Bonner, Tyler, Smith county; W. O. Murphey, Garden Valley, Smith county; E. G. Littlejohn, Starrville, Smith county.

A. B. Boren, M. R. Henderson, James Sales, Gilmer, Upshur county; H. W. Collins, Henry C. Cunliffe, Coffeerville, Upshur county; J. H. Carter, Thomas Cranfell, Callaway, Upshur county; J. H. Sewell, W. H.

Adams, Lafayette, Upshur county; J. W. McDowen, Simpsonville, Upshur county.

Respectfully,

O. M. ROBERTS, *Governor.*

Senator Brown, chairman of committee on engrossed bills, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have examined Senate bill No. 143, entitled "An act to attach certain counties therein named to the twenty-fifth judicial district;" also Senate bill No. 184, entitled "An act to fix the times of holding the district courts of the twenty-fifth judicial district," and find the same correctly engrossed. **BROWN, Chairman.**

Senator Shannon, chairman of committee on internal improvements, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on internal improvements have had under further consideration Senate bill No. 12 and substitute entitled "An act to regulate railroad companies, etc.," and instruct me to report the same back to the Senate with the accompanying amendments to the substitute, and recommend the adoption of the amendments and the passage of the bill.

**SHANNON, Chairman.**

On motion of Senator Edwards, the Senate took recess until 3 o'clock P. M.

#### AFTERNOON SESSION.

Recess expired and Senate reconvened; president *pro tempore* in the chair. Roll called; quorum present.

A message was received from the House announcing that that body had adopted the report of the conference committee on the matter of disagreement between the two Houses on House bill No. 141, entitled "An act making an appropriation for the support of the state government for the time beginning January 1, 1879, and ending March 1, 1879.

Senator Shannon, chairman of the committee on judicial districts (by leave), submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on judicial districts, to whom was referred substitute for House bill No. 151, entitled "An act to create the thirty-first judicial district of the State of Texas, and to arrange the same," have had the said bill under consideration and have instructed me to report it back to the Senate and recommend its passage. **SHANNON, Chairman.**

Senator Edwards (by leave) introduced a bill to be entitled "An act to amend an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' " passed February 21, 1879.

Read by caption and referred to committee on revision of the codes.

The unfinished business being substitute for joint resolutions Nos. 5 and 102, proposing amendments to article 5 of the state constitution, was taken up, and the pending amendments of Senators Lane and Shannon were considered.

(The president in the chair.)

Senator Terrell, from the conference committee on House bill No. 141, submitted the following privileged report:

COMMITTEE ROOM, AUSTIN, February 25, 1879.

*Hon. John H. Cochran, Speaker of the House of Representatives:*

The undersigned conference committee, to whom was referred the matter of disagreement between the Senate and House concerning House bill No. 141, entitled "An act making appropriation for the support of the state government for the time beginning January 1, 1879, and ending March 1, 1879," have again considered the same, and have agreed to and do recommend as follows, viz: That the House concur in Senate amendment as follows, viz: "Fifth—Costs to be paid sheriffs, clerks, county attorneys, in district, county and justices' courts, \$12,000."

TERRELL,  
LANE,  
GOOCH,

*On part of the Senate.*

COLEMAN,  
BRYAN,  
LINN,

*On part of the House.*

On motion of Senator Swain, the report of the conference committee, just submitted, was adopted.

The following House bills and resolutions were taken up and referred to appropriate committees:

House bill No. 15, entitled "An act for the relief of all persons whose lands have been sold for taxes and bought in by the state."

Referred to committee on state affairs.

House joint resolution No. 24, "In regard to Pelican Island."

Referred to committee on state affairs.

Substitute for House joint resolution No. 2, "amending article 8 of the constitution of the State of Texas by adding a new section, to be section 19."

Referred to committee on constitutional amendments.

Senator Edwards, from committee on revision of the codes (by leave), submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on revision of the codes having had under consideration Senate bill No. 228, entitled "An act to amend an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,'" passed February 21, 1879, a majority of said committee request me to report the same back to the Senate with the recommendation that it do pass.

EDWARDS, *for Committee.*

On motion of Senator Edwards, the Senate adjourned until 9:30 A. M. to-morrow.

## THIRTY-EIGHTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 26, 1879. }

The Senate met pursuant to adjournment; president *pro tempore* in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Swain, the reading of the journals of yesterday was dispensed with, and the same adopted.

(Senator Grace in the chair.)

Senator Tilson presented a petition from several citizens (taxpayers) of Texarkana, in Bowie county, in this state, against the passage of the bill introduced in the House by Mr. Finlay, of Galveston, known as the "bell-punch bill," giving, among other reasons, that it will drive the trade from the Texas part of their town to the Arkansas part of the same, and that *it would stop immigration from everywhere*; and they also ask for such legislation as would be suitable to them considering their peculiar location on the state line.

Referred to judiciary committee No. 1.

Senator Burton offered the following resolution:

*Resolved*, That the Senate hold two sessions a day, commencing at 10 o'clock A. M. and continue until 12 o'clock M. and then adjourn until 3 o'clock P. M.; and at the afternoon session, the roll shall be called alphabetically, when each senator, as his name is called, shall have the right to call up any bill he may desire.

Resolution lies over under the rules.

Senator Ledbetter introduced a bill, entitled "An act to amend section 94 of an act entitled 'an act to adopt and establish the Revised Civil Statutes of the State of Texas,' approved February, 1879."

Read by caption and referred to judiciary committee No. 2.

Senator Gooch introduced a bill, entitled "An act to amend chapter 3, title 78 of the Revised Statutes by creating article 3732a."

Read by caption and referred to committee on education.

Also, a bill entitled "An act to provide for the payment of sums due county school superintendents and directors for services rendered for the year ending August 31, 1876.

Referred to committee on education.

On motion of Senator Burnett, the unfinished business was postponed ten minutes, rules suspended, and House bill No. 151, entitled "An act to create the thirty-first judicial district of the State of Texas, and to organize the same," was taken up and read first time.

Senator Burnett moved to further suspend the rules and place the bill on its second reading.

Carried by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnet,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Grace,  
Guy,  
Houston,  
Lair,  
Martin,  
McCormick,  
McCulloch,

Moore,  
Motley,  
Patton,  
Ripetoe,  
Shannon,  
Storey,  
Tilson—22.

NAYS—Swain.

Not voting—Burton, Hobby, Lane, Ledbetter, Stewart, Terrell.  
Bill read second time.

On motion of Senator Burnett, the rules were suspended and bill placed on its third reading by the following vote:

## YEAS.

Brown,	Grace,	Moore,
Burnett,	Guy,	Motley.
Burton,	Houston,	Patton,
Davenport,	Lair,	Ripetoe,
Duncan,	Martin,	Shannon,
Edwards,	McCormick,	Storey,
Ford,	McCulloch,	Tilson—22.
Gooch,		

## NAYS—Swain.

Not voting—Buchanan, Hobby, Lane, Ledbetter, Stewart, Terrell.  
Bill read third time and passed by the following vote:

## YEAS.

Brown,	Grace,	Motley,
Buchanan,	Guy,	Patton,
Burnett,	Houston,	Ripetoe,
Burton,	Lair,	Shannon,
Davenport,	Martin,	Storey,
Duncan,	McCormick,	Swain,
Edwards,	McCulloch,	Tilson---23.
Ford,	Moore,	

## NAYS—none.

Not voting—Gooch, Hobby, Lane, Ledbetter, Stewart, Terrell.

Senator Davenport (by leave) introduced a bill entitled "An act amendatory of and supplemental to an act entitled 'an act establishing the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, providing the time of holding courts therein and providing for the appointment of district judges thereof,'"

Read by caption and referred to committee on judicial districts.

(President in the chair.)

On motion of Senator McCormick, the rules were suspended, unfinished business postponed five minutes and Senate bill No. 125, entitled "An act to ratify and declare valid a compromise by the commissioners' court of Brazoria county and the issuance of county bonds and levy a tax therefor in settlement of bonds of said county, issued under an act of the Legislature, passed September 1, 1856," etc., was taken up, read third time and passed.

On motion of Senator Gooch, the unfinished business was postponed fifteen minutes, rules suspended and Senate bill No. 183, to be entitled "An act to amend 'an act to better protect the papers, records and files in the general land office,' approved June 2, 1873," was taken up, read second time and ordered engrossed.

Senator Storey (by leave) introduced a joint resolution "Amending section 18 of article 3 of the constitution."

Referred to committee on constitutional amendments.

On motion of Senator Buchanan, the unfinished business was postponed, rules suspended and Senate bill No. 49, entitled "An act to give effect to section 2, article 9 of the constitution, regulating the manner of removing and locating county seats," was taken up, read third time and passed.

On motion of Senator Motley, the rules were suspended, the unfinished business postponed and Senate bill No. 113, entitled "An act for the



preservation of fish and to build fish-ways and fish-ladders," was taken up and read first time.

On motion of Senator Houston, the unfinished business was postponed, rules suspended and Senate bill No. 127, entitled "An act to provide for the holding of special terms of the district courts when and where the same may be necessary," was taken up and read first time.

Senator Houston moved to suspend the rules and place the bill upon its second reading.

Carried by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Gooch,  
Grace,  
Guy,

Hobby,  
Homan,  
Houston,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Motley,  
Patton,  
Ripetoe,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—24.

## NAYS—none.

Not voting—Brown, Edwards, Ford, Lane, McCormick, Stewart.  
Bill read second time.

Senator Houston offered the following amendment:

Amend by striking out "certified," and insert "true" in line nineteen, section 4.

Adopted.

Also, the following amendment:

Amend section 5, page 3, line four, by inserting before the word "all," the words "all process issued to a previous regular term or to such special term, and all."

Adopted and the bill ordered engrossed.

On motion of Senator Houston, the rules were suspended and the bill placed upon its third reading by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Gooch,  
Grace,  
Guy,

Hobby,  
Homan,  
Houston,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,

Motley,  
Patton,  
Ripetoe,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—24.

## NAYS—none.

Not voting—Brown, Edwards, Ford, Lane, McCormick, Stewart.  
Bill read third time and passed by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Duncan,  
Gooch,  
Grace,  
Guy,  
Hobby,

Homan,  
Houston,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,  
Moore,  
Motley,

Patton,  
Ripetoe,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson—23.

## NAYS—none.

Not voting—Brown, Davenport, Edwards, Ford, Lane, McCormick, Stewart.

On motion of Senator Terrell, the unfinished business was postponed five minutes, rules suspended and Senate bill No. 181, entitled "An act to reorganize the sixteenth judicial district, and to provide for the times of holding courts therein," was taken up and read first time.

A message was received from the House announcing the passage by that body of the following concurrent resolution:

*Resolved, the Senate concurring,* That 11 o'clock A. M., on Tuesday next, March 4, be fixed as the time for the present Legislature to elect, as required by law, six directors of the Agricultural and Mechanical College of Texas, to serve the ensuing two years, and that the Senate be respectfully invited to meet this House in joint session at said time to elect such directors.

On motion of Senator Grace, the pending business was postponed, and the Senate went into executive session to consider the appointments of notaries public sent in by his excellency the governor, on yesterday.

(Senator McCormick in the chair.)

IN SENATE—The secretary is authorized to inform his excellency the governor, that the Senate does advise and consent to all his appointments of notaries public sent in by special messages on yesterday, except that the notaries public appointed for Gregg county and J. Y. Hawkins, of Hill county, were withdrawn for correction and not acted upon.

On motion of Senator McCormick, the unfinished business was postponed ten minutes, rules suspended and Senate bill No. 23, entitled "An act to diminish the civil and criminal jurisdiction of the county court of Polk county, and to conform the jurisdiction of the district court of said county to said change," was taken up and read first time.

Senator Hobby moved to suspend the rules and place the bill on its second reading.

Carried by the following vote:

YEAS.

Brown,	Guy,	McCulloch,
Buchanan,	Hobby,	Motley,
Burnett,	Homan,	Patton,
Burton,	Houston,	Ripetoe,
Davenport,	Lane,	Shannon.
Edwards,	Lair,	Storey,
Ford,	Ledbetter,	Terrell,
Gooch,	Martin,	Tilson—26.
Grace,	McCormick,	

NAYS—none.

Not voting—Duncan, Moore, Stewart, Swain.

Bill read second time and ordered engrossed.

Senator Hobby moved a further suspension of the rules to place the bill on its third reading.

Carried by the following vote:

YEAS.

Brown	Grace,	McCormick,
Buchanan,	Guy,	McCulloch,
Burnett,	Hobby,	Moore.
Burton,	Homan,	Shannon,
Davenport,	Houston,	Storey,
Duncan,	Lane,	Swain,
Edwards,	Lair,	Terrell,
Ford,	Ledbetter,	Tilson—26.
Gooch,	Martin,	

NAYS—none.

Not voting—Motley, Patton, Stewart, Ripetoe.

Bill read third time and passed by the following vote:

## YEAS.

Brown,  
Buchanan,  
Burnett,  
Burton,  
Davenport,  
Duncan,  
Edwards,  
Ford,  
Gooch,

Grace,  
Guy,  
Hobby,  
Homan,  
Houston,  
Lane,  
Lair,  
Ledbetter,  
Martin.

McCormick,  
McCulloch,  
Moore,  
Shannon,  
Storey,  
Swain,  
Terrell,  
Tilson--26.

## NAYS—none.

Not voting—Motley, Patton, Ripetoe, Stewart.

On motion of Senator Storey, the unfinished business was postponed, rules suspended and the memorial of Mr. Clarence Toby, with report of committee was taken up and the report of the committee read.

(President *pro tempore* in the chair.)

The time for which the unfinished business was postponed having expired, the said business being substitute for joint resolutions Nos. 5 and 102, "Proposing amendments to article 5 of the state constitution," was taken up.

The pending amendment of Senator Lane and Senator Shannon's substitute for same were then considered.

(President in the chair.)

Senator Hobby from judiciary committee No. 2, submitted the following report :

*Hon. J. D. Sayers, President of the Senate :*

Your judiciary committee No. 2, to whom was referred Senate bill No. 231, entitled "An act amendatory of and supplemental to an act, entitled 'an act establishing the tenth, twelfth, thirteenth, twenty-eight, twenty-ninth and thirtieth judicial districts, and providing for the holding of courts therein and providing for the appointment of the district judges,' " etc, have considered the same, and I am instructed by the committee to report the bill back and recommend its passage.

EDWIN HOBBY, *for Committee.*

Senator Brown, chairman of committee on engrossed bills, submitted the following report :

*Hon. J. D. Sayers, President of the Senate:*

Your committee on engrossed bills have duly examined the following bills, viz:

Senate bill No. 19, entitled "An act to authorize the levy and collection of a special tax in counties where it may be necessary to construct or to complete, or to complete payment for court houses and jails."

Senate bill No. 77, entitled "An act to regulate and control the assessment of taxes on real estate."

Senate joint resolution No. 215, "Requesting senators and representatives in congress to use their influence in securing loan from general government of four batteries of artillery to adjutant general," and report them all correctly engrossed.

BROWN, *Chairman.*

On motion of Senator Burton, the Senate took recess until 3 o'clock P. M.

## AFTERNOON SESSION.

Recess expired. Senate reconvened. President in the chair. Roll called; quorum present.

The pending business being the amendment of Senator Lane and substitute for same of Senator Shannon to section 9 of substitute for joint resolution Nos. 5 and 102, proposing amendments to article 5 of the constitution, were taken up and considered.

Senator Martin moved a call of the Senate.

Call sustained.

Roll called. Absent, Senator Gooch.

The absent Senator being paired with a Senator present the call was suspended.

Senator Shannon's substitute for the amendment of Senator Lane was adopted by the following vote:

## YEAS.

Burnett,  
Burton,  
Davenport,  
Ford,  
Grace,  
Guy,

Homan,  
Lair,  
Ledbetter,  
Martin,  
McCulloch,

Moore,  
Motley,  
Shannon,  
Swain,  
Tilson—16.

## NAYS.

Brown,  
Buchanan,  
Edwards,  
Hobby,

Houston,  
Lane,  
McCormick,  
Patton,

Ripetoe,  
Storey,  
Terrell—11.

Senator Shannon's substitute for the amendment of Senator Lane was then adopted as an amendment to section 9 of the joint resolution under consideration by the following vote:

## YEAS.

Buchanan,  
Burnett,  
Burton,  
Davenport,  
Ford,  
Guy,

Homan,  
Lair,  
Ledbetter,  
McCulloch,  
Moore,

Motley,  
Shannon,  
Storey,  
Swain,  
Tilson—16.

## NAYS.

Brown,  
Edwards,  
Hobby,

Lane,  
McCormick,  
Patton,

Ripetoe,  
Terrell—8.

Senator Duncan, who was present, was paired with Senator Gooch, who was absent on duty, but stated that Senator Gooch would vote aye, while he would vote no on this proposition.

Senator Houston stated he was paired with Senator Grace, who was absent on committee duty, but that he would vote no and Senator Grace aye on this proposition.

Senator Brown offered the following substitute for section 9:

The state shall be divided into convenient judicial districts, for each of which there shall be elected by the joint vote of both houses of the Legislature a judge who shall have the qualifications of a voter of the district at the time of his election. The district judge shall hold his office during, or until removed, in the manner prescribed in this constitution, and shall at the same time hold no other office, appointment or public trust, and the acceptance thereof by him shall vacate his judicial

office. The district judge shall receive a fixed and adequate salary which shall neither be increased nor diminished during his continuance in office, and shall hold a term of the court in each county in the district at least twice a year, in such manner as shall be prescribed by law.

Amendment lost.

Senator Homan offered the following amendment to section 9, line twenty-eight, strike out "four" and insert "six."

Lost.

Senator Duncan offered the following amendment:

Amend by striking out section 9.

Lost by the following vote:

YEAS.		
Brown, Duncan,	Hobby,	Patton—4.

NAYS.		
Buchanan, Burnett, Burton, Edwards, Ford, Grace, Guy, Homan,	Houston, Lane, Lair, Ledbetter, Martin, McCormick, McCulloch, Moore,	Motley, Ripetoe, Shannon, Storey, Swain, Terrell, Tilson—23.

Not voting—Davenport, Gooch.

On motion of Senator McCormick, the vote just taken was reconsidered.

Senator Martin offered the following amendment:

Amend section 4: Strike out all after the word "shall," in line twenty-one, and all in line twenty-two to the word "which," and insert therein, "severally receive, at stated times, for their services a compensation to be established by law."

Section 9: Strike out all after the word "shall," where it occurs the second time, in line twenty-eight, and all in line twenty-nine to the word "which," and insert therein, "severally receive at stated times for their services a compensation to be established by law."

Adopted.

Senator Brown offered the following:

Amend twenty-eighth line of section 9 by striking out after the word "office" the words "for the term of four years," and insert instead thereof the words "during good behaviour."

Lost by the following vote:

YEAS.		
Brown, Hobby,	Lane,	Motley—4.

NAYS.		
Burnett, Burton, Duncan, Edwards, Ford, Guy, Homan,	Houston, Lair, Ledbetter, Martin, McCormick, McCulloch, Moore,	Ripetoe, Shannon, Storey, Swain, Terrell, Tilson—20.

Not voting—Buchanan, Davenport, Gooch, Grace.

Senator Duncan then withdrew his pending amendment and offered the following amendment:

Strike out the twenty-fifth, twenty-sixth and twenty-seventh lines to and including the word "election."

Lost.

Section 9 was then adopted.

Senator Guy offered the following amendment:

Amend section 10 by adding thereto the following: "*provided, that in any county in which a county court is now established, the original jurisdiction of the district court shall be and remain as is now provided by law until such county court shall have been abolished by a special act of the Legislature.*"

Lost by the following vote:

YEAS.		
Buchanan, Guy,	Lair, Moore,	Motley, Shannon—6.
NAYS.		
Brown, Burnett, Burton, Davenport, Duncan, Edwards, Ford,	Gooch, Hobby, Homan, Houston, Lane, Ledbetter, McCormick,	McCulloch, Patton, Ripetoe, Stewart, Swain, Terrell, Tilson—21.

Not voting—Grace, Martin.

(Senator Storey in the chair.)

Senator Edwards offered the following amendment (first offered as a substitute for the amendment of Senator Guy and withdrawn as a substitute):

Add to section 10, line one, after the word "original" the words "and concurrent."

Adopted by the following vote:

YEAS.		
Brown, Burnett, Davenport, Edwards, Gooch,	Homan, Lane, Moore, Motley,	Ripetoe, Shannon, Storey, Tilson—13.
NAYS.		
Buchanan, Duncan, Guy, Houston,	Lair, Ledbetter, Martin, McCormick,	McCulloch, Patton, Swain, Terrell--12.

Not voting—Burton, Ford, Grace, Hobby.

Section 10 was then adopted.

Section 11 was adopted.

Senator Buchanan offered the following amendment:

Add after the word "interest" in third line from top of seventh page, the following language: "and where jurisdiction over amounts in controversy equal to or exceeding two hundred and fifty dollars is so conferred on any such inferior tribunal, the judge thereof shall be a licensed lawyer, well versed in his profession."

Adopted by the following vote:

YEAS.		
Brown, Buchanan, Davenport, Duncan, Guy,	Homan, Houston, Lane, Lair, McCulloch,	Motley, Shannon, Swain, Tilson--14.

## NAYS.

Burnett,  
Burton.  
Edwards,  
Ford,

Gooch,  
Ledbetter,  
McCormick,  
Moore,

Patton,  
Ripetoe,  
Storey,  
Terrell—12.

Not voting—Grace, Hobby, Martin.

(The president in the chair.)

The president, after reading its caption, signed House bill No. 141, entitled "An act making an appropriation for the support of the state government for the time beginning January 1, 1879, and ending March 1, 1879."

(Senator Storey in the chair.)

Section 12 was then adopted.

A message was received from the House announcing the passage by that body of Senate bill No. 184, entitled "An act to fix the times of holding the district courts of the twenty-fifth judicial district of the State of Texas."

Senate bill No. 148, entitled "An act to attach certain counties therein named to the twenty-fifth judicial district."

Senate bill No. 149, entitled "An act to provide for the change of location of the court house of Marion county."

Senate bill No. 59, entitled "An act to reorganize the seventeenth judicial district of the State of Texas."

Senate bill No. 60, entitled "An act to amend an act entitled 'an act to fix the times for holding the terms of the district courts in the seventeenth judicial district, including the county of McCulloch.'"

Senator Ledbetter offered the following amendment:

Amend section 13 by striking out in lines eight and nine the words "subject to be removed by the governor for cause assigned by him."

On motion of Senator Edwards the pending business was postponed until to-morrow just after the morning call.

Senator Edwards, chairman of the committee on constitutional amendments, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on constitutional amendments to whom was referred Senate joint resolution No. 165, proposing an amendment to section 40, article 16 of the constitution of the State of Texas, have duly considered the same, and I am instructed by a majority of the committee to report it back to the Senate with the accompanying amendment, and as amended to recommend its passage.

EDWARDS, *Chairman.*

Amend by adding the following:

*Provided*, that this section shall not apply to the appointment of private secretary by the governor.

*Hon. J. D. Sayers, President of the Senate:*

Your committee on constitutional amendments have had under consideration Senate joint resolution No. 178, proposing amendments to article 16, sections 50 and 51, of the constitution of the State of Texas, and I am instructed by a majority of your committee to report the same back and recommend its passage.

EDWARDS, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on constitutional amendments, to whom was referred Senate joint resolution No. 129, proposing an abrogation of section 11,

article 16, of the constitution of the State of Texas, after considering the same, a majority of the committee have instructed me to report the resolution back to the Senate and recommend that it do not pass.

EDWARDS, *Chairman.*

On motion of Senator Edwards, the rules were suspended and Senate bill No. 159, entitled "An act to prescribe the requisite of indictments in certain cases," was taken up and one hundred copies ordered printed.

Senator Houston (by leave) introduced a bill, entitled "An act to amend title 42, chapter 4 of an act entitled 'an act to adopt and establish the Revised Statutes of the State of Texas.'"

Read by caption and referred to judiciary committee No. 2.

On motion of Senator Duncan, the rules were suspended and Senate bill No. 152, entitled "An act to authorize counties, towns and cities to compromise existing bonded indebtedness, and to issue new bonds at a lower rate of interest in lieu thereof," was taken up and read first time.

Senator Terrell (by leave) introduced a bill, entitled "An act to establish a state normal school."

Read by caption and referred to committee on education.

On motion of Senator Ripetoe the rules were suspended and Senate bill No. 211, entitled "An act to amend chapter 6, of title 15 of the new Penal Code, by further defining and punishing the offense of kidnapping," was taken up and read first time.

On motion of Senator Houston, the rules were suspended and the following bills and resolutions were taken up and 50 copies of each were ordered printed, to wit:

Senate bill No. 142, entitled "An act to regulate the admission and practice of attorneys and counselors-at-law."

Senate bill No. 151, entitled "An act to encourage the construction of artesian wells."

Senate bill No. 73, entitled "An act to provide for the record of contracts relating to land in a manner that will distinguish separate from community property," and the joint resolutions reported this evening from the committee on constitutional amendments and already given by number and caption.

On motion of Senator Lane, the rules were suspended and Senate bill No. 90, entitled "An act to suppress lawlessness and crime and to organize a force for that purpose," was taken up and read first time.

On motion of Senator Burton, the Senate adjourned until 9:30 to-morrow morning.

### THIRTY-NINTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, February 27, 1879. }

The Senate met pursuant to adjournment; president in the chair. Roll called; quorum present. Prayer by the chaplain.

On motion of Senator Ledbetter, the reading of the journals of yesterday was dispensed with and same adopted.

In the journals of yesterday, with regard to the action of the Senate in executive session, the following statement was omitted from the journals:

"That the notaries public appointed in Gregg county, and the name



of J. Y. Hawkins, of Hill county, were withdrawn for correction and not acted upon."

Senator Patton, chairman of committee on claims and accounts, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public claims and accounts have duly considered Senate bill No. 173, entitled "An act for the relief of S. W. Baker," and a majority of said committee instruct me to report that they recommend that the bill be amended by striking out "three hundred and fifty-four dollars and seventeen cents," where it occurs in the bill, and substituting therefor "one hundred and seventy-seven dollars and eight cents," and that the bill so amended do pass.

PATTON, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public claims and accounts, having considered the memorial of Moran brothers, do not find that it presents a meritorious claim against the State of Texas, and instruct me to report unfavorably to the relief in said memorial asked.

PATTON, *Chairman.*

Senator Lair, chairman of committee on public buildings and grounds, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on public buildings and grounds, have had under consideration a bill to be entitled "An act granting to Mrs. Florence Whitis the right to make a change in Laurel street, in the city of Austin," and have instructed me to report the same back to the Senate and recommend that it do pass.

LAIR, *Chairman.*

Senator Guy, chairman of committee on private land claims, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on private land claims, to whom was referred Senate bill No. 209, entitled "An act for the relief of Joseph Fenner," have had the same under consideration, and find that due notice of the same has been given, and, after examining the evidence accompanying said bill, a majority of your committee instruct me to report the same back to the Senate and to recommend its passage.

GUY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on private land claims, to whom was referred Senate bill No. 200, entitled "An act to validate certain land certificates issued on bounty land warrants to John Steele, Wm. S. Williamson, Robert Middleton, John Sculley and Richard Eggleston," have had the same under consideration, and find that notice of the same has been given as the law directs, and a majority of your committee, having examined the evidence accompanying said bill, instruct me to report the same back to the Senate and to recommend its passage.

GUY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on private land claims having duly considered Senate bill No. 160, entitled "An act for the relief of Miles N. Taylor, of Grimes county," and investigated the proofs, find that due publication was made as required by law, and that the facts stated in the preamble of the bill are true; the committee therefore return the bill and respectfully recommend its passage.

GUY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate :*

Your committee on private land claims having duly considered Senate bill No. 164, entitled "An act for the relief of James A. Barker, of Brazos county," and investigated the proofs, find that due publication was made as required by law, and that the facts stated in the preamble of the bill are true ; the committee therefore return the bill and respectfully recommend its passage.

GUY, *Chairman.*

Senator Homan introduced a bill entitled "An act to prevent attorneys who may have represented the state in any proceeding from afterward appearing as counsel adversely to the state in the same, or any other proceeding involving the same subject matter."

Read by caption and referred to judiciary committee No. 2.

Senator Houston introduced "An act prescribing the time of holding the district courts in the twenty-second judicial district."

Read by caption and referred to committee on judicial districts.

Senator McCulloch introduced "An act to regulate the proceedings in the several courts of the State of Texas and define the duties thereof."

Read by caption and referred to judiciary committee No. 1.

Senator Lane introduced a bill entitled "An act to amend articles 684 and 669 of the Penal Code, passed February 21, 1879."

Read by caption and referred to judiciary committee No. 1.

Senator Buchanan introduced a bill entitled "An act to amend article 1174 of 'an act to adopt and establish the Revised Civil Statutes of the State of Texas.'"

Read by caption and referred to judiciary committee No. 1.

Senator Swain, chairman of committee on penitentiary, submitted the following report:

*Hon. J. D. Sayers, President of the Senate :*

Your committee on penitentiary, to whom was referred Senate bill No. 36, "An act providing for the transportation of convicts under contract from the counties in which they are convicted to the penitentiary," have had the same under consideration, and instruct me to report it back to the Senate with the recommendation that it do pass.

SWAIN, *Chairman.*

(Senator Shannon in the chair.)

Senator Ford, chairman of committee on Indian affairs and frontier protection, and in connection with military affairs, submitted the following report :

*Hon. J. D. Sayers, President of the Senate :*

The committees on military and on Indian affairs and frontier protection, to whom was referred a resolution concerning the frontier battalion, have had the same under consideration, and a majority of said committees have instructed me to submit the following report :

The appropriation for maintaining the frontier battalion in the field was \$200,000, (\$150,000 and \$50,000). It covered the period from September 1, 1877, to December 31, 1878, or one year and four months.

From said amount should be deducted the value of public property, ordnance and ordnance stores, camp and garrison equipage, etc., paid for out of said appropriation, now on hand, amounting to \$18,728 50.

Forage and subsistence paid for (sufficient to last to March 1,

1879, say three months), on hand December 31, 1878....	\$6,500 00
Balance of said appropriation on hand, unexpended .....	16,000 00

Total.....	\$41,228 50
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Deducting this amount from the aforesaid appropriation of \$200,000, we have for the amount actually expended for frontier defense and in the suppression of lawlessness and crime, by the frontier battalion, from September 1, 1877, to December 31, 1878—one year and four months—the sum of \$158,771 50. Now to obtain the actual amount for the fiscal year, beginning September 1, 1877, and ending August 31, 1878, we subtract one-fourth of said amount, say \$39,692 87, leaving as actual cost for fiscal year, \$119,078 63.

The average force kept in the field for the fiscal year, beginning September 1, 1877, and ending August 31, 1878, numbered one hundred and sixty-four men. The sums expended for their support, and all other expenses for that time we have seen, amounted to \$119,078 63. Dividing this amount by the number of men, we find that each man in the said battalion cost the state \$726 09 per annum.

It must be borne in mind that this sum includes a large amount expended in the purchase of supplies to subsist prisoners, to pay expenses incurred in sending detachments to convey prisoners to different counties, incidental expenses incurred in scouting, and the expense of sending small detachments off on long distances; all of which were paid out of said appropriation. To further elucidate the question of cost, we will remark that the average amount paid for service per month to each man in the state service, including officers, non-commissioned officers and privates, is forty-two dollars and eighty-six cents per month, or nearly one dollar and forty-three cents per day, making a total of five hundred and fourteen dollars and thirty-two cents per year. By deducting this sum from seven hundred and twenty-six dollars and nine cents, we have two hundred and eleven dollars and seventy-seven cents per year, or fifty-eight cents per day as the average cost of subsisting each man, and for foraging his horse; also, for finding prisoners, paying extraordinary expenses incurred by scouts, detachments making long marches, medicines, and all other expenses, direct or incidental.

The matter of supplying state troops by permitting company commanders to purchase, was tried under Governor Davis' administration, and was found to work badly. The prices paid were exorbitant. We copy from accounts approved by an auditorial board and paid by the comptroller, namely: Corn, three dollars per bushel; hay, forty dollars per ton; flour, ten cents per pound; sugar, thirty-three and one-half to forty cents per pound; beef, ten cents per pound; beans, twenty-five cents per pound; rice, from twenty-five to thirty-three and one-third cents per pound; salt, seven and one-half cents per pound, and other articles in proportion.

When the frontier battalion first went into service, the quartermaster and commissary of subsistence procured supplies by letting contracts to the lowest bidder to furnish them. The prices paid were, per pound: Flour, eight cents; bacon, nineteen and one-half cents; beef, four and one-half cents; coffee, thirty-three to thirty-five cents; sugar, fifteen to seventeen cents; beans, fifteen cents; rice, fourteen cents; salt, five cents; corn, two dollars per bushel; and in proportion for other articles.

These articles were for troops stationed in Jack and adjacent counties, occupying the same territory as those for whom the first mentioned articles were purchased.

The quartermaster resigned in February, 1875, and the commander of the battalion was ordered to perform the duties of quartermaster and

commissary. He adopted the plan of purchasing supplies from first-class merchants in large markets, and at wholesale prices; and forage from farmers, not permitting any middle man to derive a profit at the expense of the state. In June, 1875, he made purchases and paid as follows for men stationed in Jack and adjacent counties: Flour, four and a half cents per pound; bacon, sixteen cents per pound; coffee, twenty-five cents per pound; sugar, eleven and a half cents per pound; beans, seven and a half cents per pound; rice, ten and a half cents per pound; salt, three and a half cents per pound; beef, three and a half cents per pound; and for corn, one dollar and forty cents per bushel. This plan of supplying the frontier battalion has been continued up to the present time. Orders for the supplies and vouchers, showing the prices paid during the last four years, have been examined by the committee, and they show a gradual decrease in the cost of supplies as the prices of the articles have declined in the markets; and the bills for supplies, purchased in the month of December last and delivered in camp, show that the following prices were paid, viz: Flour, three and a quarter cents per pound; bacon, nine and a quarter cents per pound; coffee, nineteen and a quarter cents per pound; sugar, eleven cents per pound; rice, ten cents per pound; beans, five and three quarters cents per pound; salt, one and three quarters cents per pound; and corn at from seventy cents to one dollar per bushel, according to the distance which it had to be hauled.

This plan of purchasing directly from large dealers, adopted by the commander of the frontier battalion, instead of having them furnished by contractors, as had been done before, has resulted in a saving to the state of about twenty-five per cent. in the cost of supplies; and the late adjutant general estimates the total amount thus saved during the last four years at forty-eight thousand dollars.

The committee has examined vouchers covering the whole time, from February, 1875, to December 31, 1878, and glean the above facts from them. They have also examined the orders made for these supplies, and the correspondence in relation thereto, and find that the supplies were purchased by the commander of the frontier battalion, the vouchers approved by him and sent to the adjutant general, and the payments made directly to the parties from whom the supplies were purchased.

Under this system of management, as shown above, the average cost per man of the frontier battalion has been seven hundred and twenty-six dollars per annum. The average cost per man in the United States army is eleven hundred dollars per annum, or fifty per cent. more than the men of the frontier battalion have cost the State of Texas.

When the following battalion was organized in May, 1874, the counties of Wise, Jack, Palo Pinto, Erath, Comanche, Brown, San Saba and Mason were sparsely populated frontier counties, subject to frequent incursions from Indians, who, sometimes, penetrated as far interior as Denton, Parker, Bosque, Burnet and Blanco counties. No new counties had been organized for twelve years previously, but, on the contrary, the counties of Young and Stephens, which once had organized governments, had been entirely depopulated, and very few people were left in Jack, Palo Pinto, and other counties, their inhabitants having been driven into the interior by the Indians.

Since this force has been in the field, and as a result of their operations, the people out there say the frontier has advanced in some directions one hundred and fifty miles. The country behind is filling up with industri

ous inhabitants, adding much to the wealth of the state, as the following comparison of taxable property will show:

The assessment rolls returned to the comptroller in 1874 of the then frontier counties of Bandera, Burnet, Clay, Comanche, Eastland, Frio, Gillespie, Hamilton, Jack, Kerr, Kinney, Lampasas, Llano, Mason, Maverick, Menard, Montague, Palo Pinto, Parker, San Saba, Wise and Young, only show taxable property for the amount of ten million four hundred and twenty-six thousand four hundred and twenty-three dollars (\$10,426,423). Those of 1878, for the same counties, amount to twenty-one million nine hundred and ten thousand two hundred and forty-five dollars (\$21,910,245), the increase in four years being eleven million four hundred and eighty-three thousand eight hundred and twenty-two dollars (\$11,483,822).

The first assessment made by the counties of Coleman, Pecos and Shackelford was in 1875, amounting to two hundred and twenty thousand one hundred and ninety-four dollars (\$220,194). That for 1878 is one million four hundred and forty-five thousand one hundred and fifty-seven dollars (\$1,445,157); an increase in less than three years of one million two hundred and twenty-four thousand nine hundred and sixty-three dollars (1,224,963).

The first assessment for the counties of Callahan, Tom Green and Presidio was returned in 1877 for one million six hundred and twenty-eight thousand and sixty-eight dollars (\$1,628,068). The following year the rolls showed two million twenty-one thousand one hundred and four dollars (\$2,021,104), taxable property.

The above comparison is made on the same basis as the assessments for 1874, and does not include a large amount of unrendered property which is returned by the assessors to the comptroller; still it shows an increase of taxable property on the frontier since 1874, of thirteen million one hundred and one thousand eight hundred and twenty-one dollars (\$13,101,821), that may be attributed to the service of the frontier battalion.

The counties of Young, Clay, Shackelford, Eastland, Coleman, Kimble, Tom Green, McCulloch, Presidio, Pecos, Taylor, Stephens, McMullen and Callahan have been settled and organized since the frontier battalion was called out in the spring of 1874; and those of Edwards, Runnels, Concho, Throckmorton, Donley, Wheeler and Archer have population enough for that purpose. The settlements have extended as far west as Wichita, Wilbarger, Knox, Baylor, Haskell, Stonewall, Fisher, Jones, Nolan, Mitchell, Scurry and Kent, which will soon become organized if properly protected.

There was a fight with Indians in Burnet, or Blanco county, only fifty miles from Austin, just before the frontier battalion went into service. As another result of the protection given along the line of operations, the grounds on which Indians were met and fought in 1875 by our rangers, is now inside the frontier lines many miles; and a thriving people are repaying in taxes the expenditures made to enable them to settle on the rich lands without the fear of depredations by Indians. Like causes are still in operation; the frontier is still pushing out further, and if protection is continued to the border settler, not many years will elapse before we will have no frontier but a foreign one.

The field of operations covered by the frontier battalion has been the organized counties of Cook, Montague, Clay, Denton, Dallas, Wise, Jack, Shackelford, Stephens, Palo Pinto, Erath, Eastland, Callahan,

Taylor, Tom Green, Coleman, Brown, Comanche, Hamilton, Lampasas, San Saba, McCulloch, Menard, Mason, Llano, Burnet, Williamson, Travis, Blanco, Gillespie, Kimble, Kerr, Kendall, Frio, Bandera, Medina, Uvalde, Kinney, Maverick, Atascosa, McMullen, La Salle, Webb, Zapata, Starr and El Paso, and the territory covered by twenty-five unorganized counties extending as far north as Wheeler, in the Pan Handle; as far south as Starr county, on the Rio Grande; and as far west as the Pecos river, and the head waters of the Colorado and Brazos rivers. Detachments of the command have attended the courts at the request of the district judges, district attorneys, county officials and leading citizens, in thirty of these counties, besides making many scouts in small detachments in pursuit of fugitives from justice, and escorting prisoners and guarding jails as far east as Tyler and Huntsville.

The better to enable the Legislature and the people to form an estimate of the activity of the frontier battalion, we present the following :

Twenty-three Indian fights; twenty-eight Indians killed; fifteen Indians known to be wounded; two Indians captured—one died the day following—the other died at Huntsville; twenty-two Indian trails followed; one captive rescued from the Indians and returned to his family; three Indian horses killed; seven rangers killed; eight rangers wounded; fourteen rangers' horses killed; six rangers' horses wounded; two thousand nine hundred and sixty-nine horses, mules and cattle recovered and returned to owners; nine hundred and thirty five criminals arrested; seven hundred and five unsuccessful attempts to arrest criminals; twenty-four criminals killed and wounded resisting arrest; two Mexicans killed and wounded resisting arrest; eight hundred and forty-six scouting expeditions; one hundred and ninety-five escorts, guarding prisoners, etc.; assisted civil authorities on one hundred and eighty-eight occasions; forty-six jails guarded.

The present condition of our Mexican frontier is unsettled in the extreme. The refuge and protection tacitly vouchsafed to criminals fleeing from Texas into Mexico not only induces citizens of that republic to fearlessly make marauding expeditions into our territory, but it also moves many of our own lawless spirits on that border to commit crimes, and, by an easy flight to that asylum, cheat justice of its dues.

The sad state of the country between the Nueces and the Rio Grande, contrasted with its former prosperity, too well attests the necessity of some remedy for the wholesale robbery and murder by Mexican citizens and our own outlaws that have for more than a generation ran riot in that favored section. From Brownsville to El Paso, a distance of nearly one thousand miles, the Rio Grande is easily forded, and as a barrier to the passage of bands of predatory Indians, Mexicans and outlaws, it avails nothing. Above Eagle Pass, until El Paso county is reached, there are, with but few exceptions, no settlements on the Texas side of the river, and, consequently, there is afforded but little inducement to the freebooter in the way of plunder; but the counties of Crockett, Pecos and Presidio, now in course of settlement, will soon afford a new field for robbers and murderers from the Mexican side, even as they now do to the Mescalera and other Mexican Indians who prey upon that part of our great state. In El Paso county the parties engaged in the riots of 1877, which culminated in the death of Howard, Atkinson and others, have not been punished, and the reports received from the officer commanding the handful of rangers stationed there show a disposition

on the part of these indicted criminals, over one hundred in number, to set the law still further at defiance.

To arrest and punish them, it will be absolutely necessary to increase the present command there to such a number as will insure the supremacy of the law. The attempt to do so with the present force will not only cause resistance on their part, but it will bring to their rescue a very large number of their Mexican allies, who are equally guilty with them.

In this county (El Paso), as well as the counties of Presidio, Pecos and Tom Green, there has been, since the promulgation of the proclamation of the president of the United States concerning them, a large influx from New Mexico of the marauders, thieves and other outlaws, who, since their arrival in this state, have not forgotten their calling. From each and all of the counties named come tidings of these outlaws. In El Paso county the civil authorities are set at naught by them, and have had to call on the squad of rangers for assistance. Becoming emboldened, some of these desperadoes fired into the quarters of the rangers, who then followed them even into Mexico and killed two of them while resisting arrest. In Pecos county fiendish murders have been committed by them, and the peaceful inhabitants of that county have appealed for state protection from these outrages. In the same county and Tom Green county they have stolen large numbers of cattle and are herding them on the Pecos river. Camping in numbers and being well armed, they bid defiance to the civil authorities, who are powerless to arrest them.

The United States forces, under late orders, will not arrest any offenders against the laws of this state; hence the strong arm which drove them out of the territory of New Mexico into the State of Texas is not available to rid our soil from the presence of these scoundrels. If they are not expelled (and how else can it be done than by the frontier battalion?) then indeed will the growing prosperity of that extensive region receive a check from which it will not soon recover.

By reason of its great extent, the paucity of civil officers, and the facility with which these few can be avoided, the frontier affords a refuge which not only our own but the criminals of all other states seek. So numerous had they become that there was literally no law on our border until the advent of the rangers. The assistance rendered by them to the civil officers in arresting fugitives from justice compelled those so fortunate as to escape arrest to seek hiding places more remote, from which they will speedily emerge once more to prey upon our frontier settlements in the absence of the protection now afforded them.

The activity displayed by the frontier battalion in hunting these fugitives caused many of them to seek refuge in the older organized counties, and, as a consequence, lawlessness increased in these. This fact, with the existence of feuds in various counties between parties of citizens, often threatening, and frequently producing deadly conflict, has necessitated the calling to their assistance, by the civil authorities, of the state military forces.

It is, perhaps, useless to call to mind the series of robberies of railway trains and stages which have within the past year brought obloquy upon the good name of our state, or to recite, in that connection, the services of the frontier battalion. The punishment by its efforts meted out to the chief actors in those robberies will long be remembered, and, while that force remains in existence, will restrain many others willing to emulate

the fame of the dead Sam Bass, but not daring to do so in the face of such swift retribution.

The value of the services of this command cannot be measured by computing the number of arrests it has made, the miles marched, the scouts performed, or by the number of Indians it has killed; but the true measure of its worth is the confidence it has inspired in the breast of the law-abiding citizen, not only on the frontier, but in the older counties, that the offender against the laws cannot escape as he has heretofore done; the cessation of Indian raids with their accompanying robberies, murders and crimes too hideous to name, perpetrated upon innocent girls and women, and the feeling of security that it has instilled into the brave, hardy pioneer, who, emboldened by its presence, is willing to settle, not only in his immediate neighborhood, but even to go beyond it.

Particular attention is directed to the last report of the late adjutant general, August 31, 1878, pages 31 to 48, both inclusive. From the communications there found from district and county judges, state's attorneys, county officials, grand juries and many prominent citizens, reasons will be deduced for the retention in service of the frontier forces that are cogent and unanswerable. Since the date of that report, and notably since the beginning of the present year, communications are daily received of the same, and even of a more pressing nature, which we have seen, and, but for the length of this paper, would be here inserted.

In the months of December and January just passed, large bodies of Indians, numbering over one thousand warriors, have come into the Pan Handle and the counties south of it. These Indians are from the Fort Sill reservation in the Indian territory, and claim to have come into this state by permission of the commander at that post, which assertion facts do not substantiate. The Indians themselves, in Donley and other counties, state that they were followed by colored troops, whom they compelled to return to Fort Sill, and then, unmolested, they came into Texas where they now are.

They openly and boldly say that they will hunt in Texas if they have to fight for it. The character of their hunting may be judged from their having taken possession of Paladora Canon, in which Captain Charles Goodnight has a stock ranch of about thirteen thousand head of cattle, which they are killing for food. The Indians, meeting with no resistance, become emboldened and insult and maltreat the scattered settlers found there, who are powerless to resist them. This cannot last; murder will follow robbery. The mutterings of the thunder that precedes the storm are now heard in that section, and so soon as spring, now near at hand, shall cause the grass to grow, we may well fear a repetition of the scenes that were enacted by those red devils in 1874 and 1875.

From Fort Concho to Red river, a distance of over three hundred miles, there is, with the exception of a small guard (less than half a company), at Fort Griffin, not a single United States soldier, and on this line, unprotected save by a few rangers, the Indians are now making their way to the interior. They have been seen on the Brazos, within sixty miles of Fort Griffin; and, even now, the news may be on the way of some frightful crime that they may have committed—a crime that will horrify the peaceful inhabitants of our older counties, and cause those, who, in their endeavor to reclaim the rich lands of our frontier counties, have periled their lives, and that which is dearer to them than life itself, to fly from their homes.



With these reasons for retaining the frontier forces in the field, your committee respectfully recommend that an appropriation of one hundred and fifty thousand dollars per annum be made for frontier defense, and for the suppression of lawlessness and crime.

We make this recommendation in the firm belief that the facts given above, and based upon official reports, justify it; that the increase of population and of taxable values which will ensue in the near future, will vindicate the wisdom of the appropriation as a measure of economy. We urge it as an act of justice to the frontier settlers who are entitled to protection to the same degree and extent as the inhabitants of our cities. We ask it in the name of humanity, and as a measure sure to enlarge the area of civilization and christianity.

JOHN H. FORD, *Chairman.*

Senator Storey, chairman of committee on finance, submitted the following reports:

*Hon. J. D. Sayers, President of the Senate:*

Your finance committee, to whom was referred Senate bill No. 131, entitled "An act to provide for ascertaining the amount due supervisors, inspectors and teachers of common free schools in the State of Texas from the 1st day of September, 1872, to the 31st day of August, 1876, and to appropriate money to pay the same," have carefully considered the same, and I am instructed by a majority of the committee present to report the bill back to the Senate with the recommendation that it do not pass.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred Senate bill No. 123, entitled "An act to amend section 12 of an act entitled 'an act to enforce the collection of delinquent taxes on lands assessed since January, 1870,'" approved August 19, 1876, have carefully considered the same, and I am instructed by a majority of the committee present to report the bill back to the Senate with the recommendation that it pass.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred the petition of the commissioners' court of Frio county, praying that their county be relieved from the payment of the state taxes for the years 1879 and 1880 in consequence of great public calamities, and that power be extended to them to levy a special ad valorem tax to meet the expense of building new court house and jail buildings, have given the same careful attention, and while your committee deeply sympathize with the citizens of Frio county in their grievances and great financial distress, it is believed to be an unwise policy to grant the relief prayed for under the state's present financial condition. Your committee are also of the opinion that under section 57, article 3 of the constitution no such relief can be granted without due publication of the intention to apply for relief. No such publication seems to have been made in this case. Your committee therefore recommend that relief to the citizens of Frio county, in the manner prayed for, be not granted.

Your committee are of the opinion that there is ample provision in existing laws under which the citizens of Frio county, or any other county in this state, may be taxed in such an annual ad valorem tax as

may be necessary to pay for court house and jail buildings in their respective counties without additional legislation in that direction.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred Senate bill No. 18, entitled "An act for the relief of persons whose lands have been sold for taxes and purchased by the state," have duly considered the same, and I am instructed by the committee to report the bill back to the Senate with the recommendation that it do not pass.

STOREY, *Chairman.*

*Hon. J. D. Sayers, President of the Senate:*

Your committee on finance, to whom was referred Senate bill No. 168, entitled "An act to amend section 18 of an act entitled 'an act regulating elections,' approved August 23, 1876, and to repeal section 22 thereof," have duly considered the same, and I am instructed by the committee to report the bill back to the Senate with the recommendation that it pass.

STOREY, *Chairman.*

Senator Storey, from the committee on constitutional amendments, submitted the following report:

*Hon. J. D. Sayers, President of the Senate:*

Your committee on constitutional amendments, after reference made, have considered House joint resolution No. 2, and in conjunction therewith Senate joint resolution No. 29, and a majority of the committee, after duly considering the same, have instructed me to report the resolutions back with amendments to the Senate resolution, and to recommend the passage of said Senate resolution as amended.

STOREY, *for Committee.*

Amendment of committee:

Add to second subdivision of section 1 the words "not to exceed in value two hundred and fifty dollars;" in first subdivision strike out "five hundred dollars" and insert "two hundred and fifty dollars."

The undersigned senators submitted the following minority report:

*Hon. J. D. Sayers, President of the Senate:*

The undersigned respectfully dissent from the views of the majority of your committee on constitutional amendments, as expressed in their action reporting a substitute for the joint resolution passed by the House of Representatives proposing an amendment to the constitution by which all farm products of the soil in the hands of the producer shall be exempt from taxation.

The undersigned recommend that the language of the resolution be so changed that the proposed amendment will read "all farm products, including wool, in the hands of the producer," etc., and that with this modification of its language, the resolution as it passed the House of Representatives should be passed in the Senate, and adequate provision be made for submitting it to the people.

We join no issue with those who hold that the constitution, as it is, requires such products to be taxed, but because it does, if it does, or because it is doubtful, if it is even doubtful, we should propose the amendment that will clearly relieve the farming interest from this unequal, impolitic and unjust burden.

It is not believed to have been in the minds of members of the convention framing the constitution that the instrument thus proposed to the

people required such products to be taxed. Certainly the universal and indignant surprise manifested all over the state when the assessment of such products began, clearly establishes the fact that it was not in the minds of the people when they adopted the constitution that its provisions required such products to be assessed. In the first state political convention which met after such assessments had brought the question directly to the attention of the people, a convention representing fully two-thirds of the whole citizenship of Texas, the voice of the people was distinctly uttered in favor of the amendment proposed by the House of Representatives. It is right and just in principle and required by a sound public policy. In every country the ultimate basis of permanent prosperity, and of continuing free institutions, is the productions of its soil and the virtue of its toiling husbandmen. These products of the farm are the reward, often in very meagre measure and never in very large measure, which the farmer reaps from unremitting toil and incessant exposure to all stages of the weather, however sudden or severe its changes or however long its inclemency may continue.

To these irksome and continued labors, and slow, uncertain and small returns, cannot be added the burdens of unequal, if not double, taxation without unduly discouraging such pursuits.

Such taxation is unequal in a striking degree. The wealth of the farmer is his farm, his land, draught animals and implements of husbandry, which being used from year to year and always in hand and in sight, and of easily ascertainable value, are more generally and fully assessed than other property in the state. The products of his farm in gross do not in any just sense constitute a part of the farmer's wealth; they are his gross income, and the farmer really owns in them only so much, if any, as shall be left after the cost of their production, including the support of himself and family for the year has been taken out, and this cannot be taken out while the products remain, unconverted, in the hands of the producer. To tax these products is in fact to levy an income tax on the gross earnings of farmers, while the incomes of all other citizens are free from taxation until its net result finds investment in some taxable commodity.

McCORMICK,  
BUCHANAN,  
EDWARDS,  
GOOCH,  
HOUSTON,  
SHANNON.

Senator Buchanan (by leave) introduced a bill entitled "An act to amend article 1289 of 'an act to adopt and establish the Revised Civil Statutes of the State of Texas.'"

Read by caption and referred to judiciary committee No. 1.

On motion of Senator Houston, the unfinished business was postponed five minutes, rules suspended and Senate bill No. 88, entitled "An act to amend sections 518 and 519 of an act entitled 'an act to establish a code of criminal procedure for the State of Texas,'" was taken up and read first time.

On motion of Senator Burnett, the unfinished business was postponed twenty minutes, rules suspended and Senate bill No. 160, entitled "An act for the relief of Miles N. Taylor, of Grimes county," was taken up and read first time.

Also, the rules were suspended and Senate bill No. 164, entitled "An

act for the relief of James A. Barker, of Brazos county," was taken up and read first time.

(President in the chair.)

On motion of Senator Houston, the rules were suspended and Senate bill No. 87, entitled "An act regulating juries in capital cases," was taken up and read first time.

The president, after reading its caption in open senate, signed Senate bill No. 20, entitled "An act to establish a penal code and code of criminal procedure for the State of Texas."

On motion of Senator Shannon, the rules were suspended and Senate bill No. 77, entitled "An act to regulate and control the assessment of taxes on real estate was taken up, read third time and passed.

Senator Shannon moved to suspend the rules, postpone the unfinished business and take up Senate bill No. 231, entitled "An act amendatory of and supplemental to an act entitled 'an act establishing the tenth, twelfth, thirteenth, twenty-eighth, twenty-ninth and thirtieth judicial districts, providing the times of holding the courts therein, and providing for the appointment of district judges of the twenty-eighth, twenty-ninth and thirtieth judicial districts,'" approved ..... 1879.

Carried, and said bill taken up and read first time.

On motion of Senator Davenport, the rules were further suspended to place the bill upon its second reading by the following vote:

YEAS.

Brown,	Homan,	Motley,
Buchanan,	Houston,	Patton,
Burnett,	Lane,	Ripetoe,
Burton,	Lair,	Shannon,
Davenport,	Martin,	Storey,
Duncan,	McCormick,	Swain,
Gooch,	McCulloch,	Tilson---22.
Guy,		

NAYS—none.

Not voting—Edwards, Ford, Grace, Hobby, Ledbetter, Moore, Terrell.  
Bill read second time and ordered engrossed.

Senator Davenport moved to still further suspend the rules and place the bill on its third reading.

Carried by the following vote:

YEAS.

Brown,	Gooch,	McCulloch,
Buchanan,	Guy,	Motley,
Burnett,	Homan,	Patton,
Burton,	Houston,	Ripetoe,
Davenport,	Lane,	Shannon,
Duncan,	Lair,	Storey,
Edwards,	McCormick,	Tilson—21.

NAYS—none.

Not voting—Ford, Grace, Hobby, Ledbetter, Martin, Moore, Swain, Terrell.

Bill read third time and passed by the following vote:

YEAS.

Brown,	Duncan,	Houston,
Buchanan,	Edwards,	Lane,
Burnett,	Gooch,	Lair,
Burton,	Guy,	McCormick,
Davenport,	Homan,	McCulloch,