

JOURNAL
OF THE
HOUSE OF TEXAS
TWENTY-FIFTH LEGISLATURE
1st CALLED SESSION
1897

Meade.	Shelburne.
Mercer.	Shropshire.
Moore of Lamar.	Skillern.
Morris.	Sluder.
Morton.	Smi'h.
O'Connor.	Smyth.
Oliver.	Stamper.
Peery.	Stokes.
Pfeuffer.	Strother.
Pitts.	Thaxton.
Porter.	Thomas.
Randolph.	Turner.
Reubell.	Vaughan, Guad'lup
Rhea.	Vaughan of Collin.
Robbins.	Wall.
Rogan.	Wallace.
Rudd.	Welch.
Savage.	Williams.
Schlick.	Wolters.
Seabury.	Wood.

Absent.

Bailey.	Holland of Harris.
Bell.	Kimbell.
Benson.	Kirk.
Bertram.	Melton.
Blackburn.	Moore, Fort Bend.
Browne.	Mundine.
Burns.	Neighbors.
Callan.	Patterson.
Dennis.	Reiger.
Evans of Grayson.	Rogers.
Ewing.	Staples.
Fields.	Thompson.
Garrison.	Tracy.
Gilbough.	Tucker.
Good.	Ward.
Henderson.	Wilcox.
Hill of Gonzales.	

Excused.

Collier.	Flint.
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A quorum was announced present.

Prayer by Dr. J. A. Jackson, Chaplain.

Pending reading of the Journal of last Friday and Saturday,

On motion of Mr. Burney, further reading was dispensed with.

GRANTED LEAVE OF ABSENCE.

On account of important business:

Mr. Garrison for to-day, on motion of Mr. Doyle.

Mr. Gilbough for to-day, on motion of Mr. Wolters.

Mr. Blackburn for to-day, on motion of Mr. Barrett.

Mr. Hill of Gonzales for to-day, on motion of Mr. Savage.

Mr. Patterson, Mr. Benson and Mr. Bell for to-day, on motion of Mr. McKellar.

Mr. Wilcox for to-day, on motion of Mr. Vaughan of Collin.

Mr. Wallace for last Saturday, on motion of Mr. Meade.

Mr. Kimbell until Thursday, and Mr. Good for to-day, on motion of Mr. Wood.

Mr. Tucker for this week, on motion of Mr. Bounds.

Mr. Welch indefinitely, on motion of Mr. Dies.

Mr. Bounds, Mr. Holland of Harris and Mr. Staples for to-day, on motion of Mr. Boyd.

Mr. Fields and Mr. Henderson for to-day, on motion of Mr. Brewster.

Mr. Rogers for to-day, on motion of Mr. Carpenter.

Mr. Thaxton from last Friday until to-day, on motion of Mr. McGaughey.

Mr. Rogers and Mr. Bean for last Saturday, on motion of Mr. McGaughey.

Mr. Bailey for to-day, on motion of Mr. McFarland.

Mr. Porter for last Saturday, on motion of Mr. Humphrey.

Mr. Reiger for to-day, on motion of Mr. McKamy.

On account of sickness:

Mr. Kirk for to-day, on motion of Mr. Wolters.

Mr. Evans of Grayson for to-day, on motion of Mr. Freeman.

Mr. Evans of Hunt for last Thursday, Friday and Saturday, on motion of Mr. Brigrance.

Mr. Mundine for this week, on motion of Mr. Burney.

MESSAGE FROM THE GOVERNOR.

The following message, transmitted through Mr. E. R. McLean, private secretary, was received from his Excellency, the Governor:

Executive Office,

Austin, Texas, May 31, 1897.

To the Senate and House of Representatives:

During the past week the town of El Paso and immediate vicinity, in this State, was partially overflowed by a sudden and unprecedented flood. The homes of hundreds of people were destroyed and great destitution in consequence prevails. On Saturday last, too late for investigation and action, the mayor of El Paso telegraphed me as follows: "Five hundred homes destroyed by flood. Three thousand, mainly of our poorest, homeless. Citizens not damaged overwhelmed by demands on their charity. Many will suffer hunger and perhaps death if not relieved at once. Will you call our situation to the attention of the Legislature and have the State assist its suf-

fering citizens?" On yesterday, the following telegram in answer to one sent by me was received from Senator Turney at El Paso, who represents that senatorial district: Ours is a condition demanding State aid. I will be with you Tuesday and help arrange for proper distribution." From these telegrams, and information derived from the public press, it appears that the destruction of property by this flood is a public calamity, within the meaning of section 51, article 3, of the Constitution. It is, therefore, respectfully recommended that an appropriation be made, which shall be immediately available, for the relief of citizens of this State who have suffered by such overflow, to be distributed under the direction of such officials as may be named in the act of appropriation. The members of the House of Representatives from El Paso and contiguous counties are of the opinion, in view of private and congressional aid, that \$5000 will be sufficient for the purpose.

C. A. CULBERSON.

Read and referred to the Committee on Finance.

The Speaker appointed Mr. Green, chairman of the committee to visit the Executive Department, in lieu of Mr. Rogan, resigned.

BILLS AND RESOLUTIONS.

By Mr. Seabury:

House bill No. 16, a bill to be entitled "An act to amend article 5133, of the Revised Civil Statutes of the State of Texas (1895), relating to the compensation of assessors of taxes."

Read first time, and referred to Judiciary Committee No. 1.

By Mr. Seabury:

House bill No. 17, a bill to be entitled "An act to amend article 5206, of the Revised Civil Statutes of the State of Texas (1895), relating to the compensation of collectors of taxes."

Read first time, and referred to Judiciary Committee No. 1.

By Mr. Welch and Mr. Thompson:

House bill No. 18, a bill to be entitled "An act for the immediate relief of the citizens of the city of El Paso and El Paso county, who are sufferers from the overflow of the Rio Grande during the past week, and to appropriate the sum of \$5000 therefor."

Read first time, and referred to the Committee on Finance.

By Mr. Beaird:

House bill No. 19, a bill to be entitled "An act to amend chapter 3, title 45, of the Revised Civil Statutes of the

State of Texas, relating to salaries, commissions, costs, fees and perquisites of county judges, clerks of the district courts, clerks of the county courts, sheriffs, justices of the peace, constables, county commissioners, county treasurers, district and county surveyors, inspectors of hides and animals, notaries public and public weighers, and to amend article 5133, chapter 3, title 104, of the Revised Civil Statutes of Texas, regulating the compensation of assessors of taxes, and to amend articles 5206 and 5207, of chapter 4, title 104, of the Revised Civil Statutes of the State of Texas, regulating the compensation of collectors of taxes; and to amend chapters 2, 3 and 4, title 15, of the Code of Criminal Procedure of the State of Texas, relating to the salaries, commissions, costs, fees and perquisites of State, district, county, precinct and city officers in this State in felony and misdemeanor cases, and to regulate and control the issuance and execution of all process for witnesses in such cases and the fees of such witnesses, and regulating the compensation of county judges, justices of the peace and peace officers for services rendered in the trial of lunacy cases and holding examining trials and inquests over dead bodies, the safe keeping, feeding of prisoners, and to repeal all laws and parts of laws in conflict with the provisions of this act."

Read first time, and referred to the Committee on State Affairs.

PRIVILEGED REPORT.

By Mr. McGaughey, chairman:

Austin, Texas, May 29, 1897.

Hon. L. T. Dashiell, Speaker of the House of Representatives:

We, your committee appointed to report upon the work of the clerks in the Educational Department, respectfully submit the following:

Number of clerks, 7.

1. Chief clerk, who is also the law clerk of the department. This clerk really performs the duties of deputy superintendent and law clerk. He takes the place of the Superintendent when the latter is absent from the office, as he often must be. He is expected to be familiar with the school laws and all the details of school organization and school work in this State, so as to advise county superintendents and teachers upon any point submitted in the State Superintendent's absence; to make himself familiar with the systems of school laws

vote "yea," with Mr. Good (absent), who would vote "nay."

On motion of Mr. Maxwell, the House at 12 o'clock m. took recess until 3 p. m. to-day.

AFTERNOON SESSION.

The House was called to order by the Speaker at 3 p. m.

On motion of Mr. Humphrey, Mr. Reiger was excused for to-day, on account of important business.

COMMITTEE REPORTS.

MAJORITY REPORT.

By Mr. Carpenter, chairman:

Committee Room,

Austin, Texas, June 11, 1897.

Hon. L. T. Dashiell, Speaker of the House:

Your Committee on State Affairs, to whom was referred

Senate bill No. 4, a bill to be entitled "An act to fix and limit the fees and compensation of clerks of the district court, district attorneys, county attorneys, sheriffs and constables in felony cases to be paid by the State, and to fix the compensation of assessors and collectors of taxes, and to limit and to regulate the compensation of the sheriff, clerk of the county court, county judge, district and county attorney, clerk of the district court, assessor and collector of taxes, constables and justices of the peace, and to prescribe penalties for the violation of this act, and to repeal all laws in conflict herewith,"

Have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do not pass.

CARPENTER, Chairman.

MINORITY REPORT.

Committee Room,

Austin, Texas, June 11, 1897.

Hon. L. T. Dashiell, Speaker of the House:

We, a minority of your Committee on State Affairs, to whom was referred Senate bill No. 4, do not concur with the majority of the committee, and beg to report the same back to the House with the recommendation that it do pass.

LOVE,
MAXWELL.

On motion of Mr. Maxwell, the House took recess for thirty minutes.

After recess, the House was called to order by the Speaker.

MESSAGE FROM THE GOVERNOR.

The following message, transmitted through Mr. E. R. McLean, private secretary, was received from his Excellency, the Governor:

Executive Office,

Austin, Texas, June 14, 1897.

To the Senate and House of Representatives:

For purposes of legislation at this session, your attention is respectfully invited to the following subjects:

1. A general occupation tax law.
2. Measures to encourage the establishment of factories.
3. The railway gate system now in operation on some of the railroads of the State.

4. To fix the time of holding court in the Thirty-eighth judicial district, so as to avoid the *hiatus* created by laws passed at the regular session.

5. Amend article 3051, Revised Statutes, so that the Commissioner of Insurance shall have full and needful authority to make examination of the books and business of insurance companies.

6. Require the payment of all county taxes in current money, except such as may be paid in coupons and other indebtedness under section 6, article XI, of the Constitution.

7. Amend article 1331 of the Revised Statutes, as specially recommended and urged by the Supreme Court, so as to provide a simple and expeditious method for the decision of controverted questions of fact by special verdicts of juries.

8. Amend the law with reference to the expenditure of the available school fund, so that this fund may be economically and properly distributed for strictly school purposes, and regulate the taking of the scholastic census in order that existing fraudulent methods may be corrected. Fraud in the scholastic census is resorted to in order to secure an unjust and unequal share of this fund, and it is becoming more general and scandalous. In one city in the State the net gain in scholastic population, as reported, exceeds 2000 for the present as compared with the previous year.

9. The good name of the State, respect for our governmental institutions and sentiments of humanity demand that mob violence be suppressed. Its growth is alarming and ominous. For a time the sole objects of its vengeance were those charged with criminal assault upon females, and thus found some measure of provocation and apol-

ogy in manly and chivalric instincts. Taking encouragement from this toleration, it now seeks to judge and punish for murder, and in a recent instance, in Waller county, was used for the suppression of testimony. It has reached that stage in this State where it is an indictment of the whole people and a defilement of their civilization. Experience makes it plain that ordinary judicial machinery is inadequate, and if it is to be destroyed and the State spared further debasement extraordinary measures must be adopted. That my views of the means necessary and feasible may be more clearly presented, a bill is submitted herewith for your consideration. The salient features of the act are (1) speedy punishment for rape, thus removing any cause for mobs; (2) legal denunciation of the participants in mobs as murderers, to be punished accordingly; and (3) removal from office of any officer who, under any circumstances, permits a prisoner to be executed by a mob. The enormity of the offense of rape, and the delay incident to our present judicial system, are the most common excuses for mob violence. Under existing law, it often happens that an indictment can not be returned for months, and the trial afterward is subject to vexatious delay. The bill submitted authorizes the finding of an indictment immediately in any county in the judicial district of the offense where the court may be in session, and, if not in session, then in the first county in the district in which the court is held. A speedy trial is then provided for and precedence is given over all other cases in all courts. Besides the menace to criminals which it offers in swift and ignominious punishment, this would remove all pretext for the populace to take the law in their hands. If, in plain violation of the law, they nevertheless take human life and cruelly deny to an accused the opportunity to offer proof of innocence, they are guilty of murder, and their punishment should at least be rendered probable by fixing the venue of the prosecution in other counties than their residence. The jail and the courthouse represent public law. An attack upon them questions the capacity of the people for self government, and is an assault upon civilization itself. The sacrifice of human life by mobs, the victims sometimes innocent and often their guilt in doubt, is appalling, but the disavowal of legal restraint and the trampling under foot of organized gov-

ernment which they involve is far more portentous. The officer charged with their preservation, who, under any conditions, will permit the civil institutions of a Christian people to be thus assailed and desecrated is unworthy the trust. That removal proceedings may be effectual, they should be directed by the Attorney General in counties free from the influences which would necessarily embarrass or defeat them. Obviously, the officer should be rendered ineligible to reelection or appointment, for, otherwise, removal would be a farce.

C. A. CULBERSON.

A bill to be entitled "An act to fix the venue and regulate the proceedings in prosecutions for rape; define and punish murder by mob violence; provide for the suspension and removal of sheriffs, deputy sheriffs, constables, chiefs of police, city marshals and other officers who permit it; and fix the venue and regulate proceedings in such cases.

Be it enacted by the Legislature of the State of Texas:

Section 1. Prosecutions for rape may be commenced and carried on in the county in which the offense is committed, or in any county of the judicial district in which the offense is committed or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this act that the offense of rape has probably been committed, it shall be his duty immediately, if his court be in session, and if not in session, then at the first term thereafter in any county of the district, to call the attention of the grand jury thereto; and, if his court be in session but the grand jury shall have been discharged, he shall immediately recall said grand jury for the consideration of the accusation. Prosecutions for rape shall take precedence of all cases in all courts and the district courts are hereby authorized and directed to change the venue in such cases, whenever it shall be necessary to secure a speedy trial.

Sec. 2. Every person with a sound

memory and discretion who shall kill any reasonable creature in being in this State, or participate in such killing or aid in any manner therein, when the person so killed is accused of crime, or is in the custody of officers of the law, or is taken therefrom by violence, shall be deemed guilty of murder by mob violence, and upon conviction thereof shall be punished by death or confinement in the penitentiary for a period of years not less than five, in the discretion of the jury.

Sec. 3. It shall be the duty of the district judges of the State to give this law specially in charge to the grand jury at the beginning of each term of court. Prosecutions for murder under this act may be commenced and carried on in any county of the judicial district in which the offense is committed, except the county of the offense, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in any adjoining county.

Sec. 4. If any sheriff, deputy sheriff, constable, chief of police, city marshal or other officer in this State shall permit any person in his custody charged with crime to be killed by one or more persons, or shall permit any such person to be taken from his custody and killed by one or more persons, he shall be deemed guilty of official misconduct and removed from office, and the custody of a deputy shall be the custody of his principal. Proceedings to remove such officer from office may be commenced and carried on in any county named in section 3 of this act. Said proceedings for the removal of said officers shall be conducted by the Attorney General or under his direction in the name of the State of Texas, and shall be commenced by filing in the district court of the proper county a petition which shall be addressed to the judge of the court in which it is filed, and shall set forth in plain and intelligible language the facts as grounds of removal.

Sec. 5. After the filing of such petition, citation to the defendant shall issue as now provided by law in other civil cases. The trial and all the proceedings connected therewith shall be conducted as far as it is practicable in accordance with the rules and practice of the court in other civil cases; and appeals or writs of error may be

sued out by either party to all appellate courts as in other civil cases; *provided*, such case shall take precedence in all courts of all other cases.

Sec. 6. The petition provided for in section 4 shall be filed by the Attorney General, or under his direction, as soon as practicable after he shall be informed of the facts, and within ten days after the same shall have been filed he shall make application to the district judge to whom it is addressed to have the officer against whom it is filed suspended temporarily from office. Five days' notice of this application shall be given the defendant, and, upon the hearing of such application, if it shall appear that the defendant permitted any person in his custody charged with crime to be killed by one or more persons, or permitted any such person to be taken from his custody and killed by one or more persons, the judge shall forthwith suspend the defendant temporarily from office and appoint for the time being some other person to discharge the duties of the office, which person shall, before assuming the duties of the office, execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, on such conditions as the judge may impose, to pay the defendant all damages and costs that he may sustain by reason of such suspension from office in case it should appear that the cause of removal is insufficient or untrue.

Sec. 7. In the trial of the case, the judge shall not submit special issues, but shall, under a proper charge, applicable to the facts of the case, instruct the jury to find from the evidence whether the cause of removal set forth in the petition is true in point of fact. Should the jury find that said cause of removal is true, judgment of ouster shall be entered against the defendant, and he shall not thereafter be elected or appointed to said office.

Sec. 8. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 9. The fact that there is no adequate law in this State for the suppression of rape and mob violence creates an emergency and an imperative public necessity that the constitutional rule requiring all bills to be read on three several days be suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

The message was read and referred to Judiciary Committee No. 2.

PRIVILEGED REPORT.

Austin, Texas, June 14, 1897.

Hon. L. T. Dashiell, Speaker of the House of Representatives:

Your special committee, to whom was referred the resolution relating to the absence of Hon. James Callan from the sittings of the House during the present session of the Twenty-fifth Legislature, which committee was also instructed to investigate as to the absence of all members who have not reported during the special session, beg to submit the following report:

A letter received from Hon. James Callan, under date of June 11th, instant, expresses earnest regret at his absence from the session of the Legislature, and states that it has been occasioned by the serious illness of his wife, who only within the past week has been pronounced free from danger. In view of this statement, your committee recommend that Mr. Callan be excused for his past absence, and also that he be excused from attendance indefinitely in the future.

In regard to other absenteeism, we have to state that Hon. A. B. Flint is the only other member of the House who has been continuously absent since the beginning of this session, and the committee are reliably informed that he is in a very low state of health and physically unable to be present. He has been excused indefinitely, dating from the beginning of the session.

All of which is respectfully submitted.

FIELDS, Chairman.

SAVAGE,

GRAHAM,

THAXTON,

AYERS.

Adopted.

Mr. Brigrance offered the following resolution:

House concurrent resolution No. 2:

Be it resolved by the House of Representatives, the Senate concurring, that the special session of the Twenty-fifth Legislature do stand adjourned on Thursday, June 17th, 1897, at 6 p. m. (Signed—Wolters, Brigrance.)

Read second time, and

Mr. Turner offered the following substitute:

Resolved by the House of Representatives, the Senate concurring, that the extra session of the Twenty-fifth Legislature stand adjourned

sine die at 9 o'clock a. m., June 15th, A. D. 1897.

Mr. Fields moved to table both resolutions.

Yeas and nays were demanded by Mr. Wolters, Mr. Turner and Mr. Brigrance.

Mr. Wolters called for a division of the question.

Question then first recurred on the substitute by Mr. Turner.

Tabled by the following vote:

Yeas—78.

Alexander.	Lotto.
Ayers.	Love.
Bailey.	Martin.
Barbee.	Maxwell.
Barrett.	McGaughey.
Bean.	McKamy.
Bertram.	McKellar.
Bird.	Melton.
Blackburn.	Moore, Fort Bend.
Boyd.	Moore of Lamar.
Brewster.	Morton.
Browne.	Oliver.
Burns.	Peery.
Carpenter.	Pfeuffer.
Carswell.	Porter.
Childs.	Randolph.
Crawford.	Rhea.
Crowley.	Robbins.
Cureton.	Rogan.
Curry.	Savage.
Dean.	Schlick.
Dennis.	Seabury.
Dickinson.	Shelburne.
Dorroh.	Shropshire.
Drew.	Skillern.
Evans of Hunt.	Sluder.
Evans of Grayson.	Smith.
Ewing.	Smyth.
Feild.	Stamper.
Fields.	Strother.
Fisher.	Thaxton.
Harris.	Thomas.
Hensley.	Thompson.
Hill of Gonzales.	Tracy.
Hill of Travis.	Tucker.
Humphrey.	Turner.
Kimbell.	Vaughan, Gua'lupe.
Kirk.	Wall.
Lillard.	Wood.

Nays—7.

Brigrance.	Neighbors.
Gilbough.	Vaughan of Collin.
Good.	Wolters.
Mercer.	

Absent.

Bell.	Conoly.
Benson.	Doyle.
Blair.	Edwards.
Bounds.	Freeman.
Bumpass.	Garrison.
Collier.	Graham.