Seabury. Thomas.
Shelburne. Thompson.
Shropshire. Wall.
Skillern. Wallace.
Smith. Welch.
Stamper. Williams.
Stokes. Wolters.

Nays—46.
Alexander. McKamy.
Ayers. McKellar.
Bell. Morton.
Bertram. Neighbors.
Bird. O'Connor.
Blair. Oliver.
Brigance. Patterson.
Burns. Porter.
Crawford. Randolph.
Dennis. Rogers.
Evans of Grayson. Rudd.
Flint. Smyth.
Gilbough. Staples.
Good. Strother.
Green. Thaxton.
Hill of Gonzales. Tracy.
Holland of Burnet. Tucker.
Holland of Harris. Turner.
Humphrey. Vaughan of Collin.
Logan. Ward.
Lotto. Wilcox.
Maxwell. Wood.

Abs. 1.
Beard. Henderson.
Bean. Martin.
Callan. McFarland.
Conoly. McGaughey.
Dorroh. Pfeuffer.
Drew. Rogan.
Harris.

Excused.
Blackburn. Mercer.
Childs. Moore, Fort Bend.
Crowley. Mundine.
Dies. Pitts.
Manson. Vaughan, Guadalupe.

PAIRED.
Mr. Sluder (present), who would vote "yea," with Mr. Reiger (absent), who would vote "nay."

Question next recurred on the amendment by Mr. Rogan. Pending which,

On motion of Mr. Blair, the House took recess until 8 o'clock p.m., today, the hour set apart to listen to the address by Hon. J. L. M. Curry.

EVENING SESSION.
The House was called to order by the Speaker, pursuant to recess.
March 9, 1897

HOUSE JOURNAL. 501

BILLS AND RESOLUTIONS.

By Mr. Flint:
House bill No. 575, a bill to be entitled "An act to establish a more efficient road system for Marion county, and to provide for the appointment of county superintendent of public roads."

Read first time and referred to Committee on Roads, Bridges, and Ferries.

By Mr. Vaughan of Collin:
House bill No. 576, a bill to be entitled "An act to create the office of public cotton weigher of justice precincts in the counties of the State of Texas when so desired by a majority of the qualified electors of any justice precinct in the State, to prescribe the oath and bond, to define the duties of such public cotton weigher and his deputies, to prescribe the fees of such officer, and to fix penalties for the violation of the provisions of this act, and to repeal all laws in conflict herewith."

Read first time and referred to Committee on State Affairs.

By Mr. Savage:
House bill No. 577, a bill to be entitled "An act to create a more efficient road system for Montague county, in the State of Texas, and making county commissioners of said county ex officio road commissioners, and prescribing their duties as such, and providing for their compensation as road commissioners, and defining the powers and duties of the commissioners' court of said county, and to provide for the manner of training the hedges along the public roads, and fixing a penalty for the violation of this act, and to repeal all laws in conflict with this act."

Read first time and referred to Committee on Roads, Bridges and Ferries.

By Mr. Turner:
House bill No. 578, a bill to be entitled "An act to authorize cities and towns whose corporate limits have been reduced in compliance with chapters 16 and 120 of the Revised Statutes, to levy and collect a tax on all the territory formerly belonging within the corporate limits of such city or town and excluded therefrom under said chapters 16 and 120."

Read first time and referred to Committee on Revenue and Taxation.

By Mr. Staples:
Whereas, Hon. Joseph D. Sayers of Bastrop county, an honored and faithful representative of the people of Texas in the national House of


Absent.

Morris.       Excused.

Childs.       Mercer.

Crowley.       Moore, Fort Bend.

Doroh.       Pitts.

Henderson.       Randolph.

Martin.       Reiger.

McFarland.       Vaughan, Guadalupe

A quorum was announced present.

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

Pending the reading of the Journal of yesterday,

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

GRANTED LEAVE OF ABSENCE.

On account of important business:

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

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

Mr. Rudd until Thursday, on motion of Mr. Rogan.

Mr. Morris for to-day, on motion of Mr. McGaughey.

Mr. Mercer for to-day, on motion of Mr. Bertram.

On account of sickness:

Mr. Randolph indefinitely, on motion of Mr. Dean.

Mr. Burney for to-day, on motion of Mr. Stokes.

PETITIONS AND MEMORIALS.

By Mr. Peery:
A petition of 80 citizens of Archer county, asking for a law to prevent the putting out of poisoned meats for the purpose of catching and killing skunks.

Read and referred to the Committee on State Affairs.
Representatives, whose able services and constant zeal in behalf of the interests of our State has merited and received general recognition, and whose work as a member of the Appropriations Committee in reducing the expenditures of the Federal government, has gained for him national distinction, is now present in this hall; and

Whereas, we desire to testify to our earnest appreciation of his valuable public services; therefore be it

Resolved, that we hereby cordially welcome him to the House of Representatives of Texas and extend to him the courtesies and privileges of the hall. (Signed—Staples, Fields, Garrison.)

Read second time and adopted.

SPECIAL ORDER FIXED.

House bill No. 247, for Tuesday, March 16, at 10 o'clock a.m., on motion of Mr. Stamper.

Mr. Lotto moved to suspend pending business to take up House bill No. 119, to make it a special order for Monday, March 15 at 10 o'clock a.m., and the motion was lost.

RECOMMENDED.

House joint resolution No. 15 (reported adversely) to Committee on Constitutional Amendments, on motion of Mr. Rogers, chairman.

APPOINTMENTS ANNOUNCED.

Conference committee on part of the House on Senate bill No. 52: Messrs. Williams, Logan, Lillard, Hensley and Rhea.

COMMITTEE REPORTS.

By Mr. Ward, chairman:

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiel, Speaker of the House:
Your Judiciary Committee No. 1, to whom was referred
House bill No. 563, a bill to be entitled "An act to amend section 6 of chapter 132 of the acts of the Twenty-fourth Legislature of the State of Texas, passed at the regular session thereof, and entitled 'An act to create a more efficient road system for Dallas, Lamar and Medina counties, Texas, and making county commissioners of said counties ex officio road commissioners, and prescribing their duties as such, and providing for their compensation as road commissioners, and defining the duties and powers of such county commissioners,'"

Have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do pass.

WARD, Chairman.

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiel, Speaker of the House:
Your Judiciary Committee No. 1, to whom was referred
House bill No. 563, a bill to be entitled "An act to amend section 6 of chapter 132 of the acts of the Twenty-fourth Legislature of the State of Texas, passed at the regular session thereof, and entitled 'An act to create a more efficient road system for Dallas, Lamar and Medina counties, Texas, and making county commissioners of said counties ex officio road commissioners, and prescribing their duties as such, and providing for their compensation as road commissioners, and defining the duties and powers of such county commissioners,'"

Have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do pass.

WARD, Chairman.

MAJORITY REPORT.

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiel, Speaker of the House:
Your Judiciary Committee No. 1, to whom was referred
Senate bill No. 236, a bill to be entitled "An act to amend article 22, title 4, of the Revised Civil Statutes of the State of Texas (1895), so as to extend the terms of the district court in Orange and Jefferson counties,"

Have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do pass.

WARD, Chairman.
same back to the House with the recommendation that it do not pass.

WARD, Chairman.

MINORITY REPORT.

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiell, Speaker of the House.

We, a minority of your Judiciary Committee No. 1, to whom was referred House bill No. 416, a bill to be entitled "An act to amend article 651, chapter 3, title XXI, of the Revised Statutes, defining the powers and duties of private corporations, and granting to street railway companies now existing and hereafter chartered the right to use the tracks and roadbeds of other street railway companies in cities or incorporated towns."

Do not concur with the majority, and beg to report the same back to the House with the recommendation that it do pass.

RANDOLPH, TRACY,
NEIGHBORS,
SEABURY.

By Mr. Bertram, chairman:

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiell, Speaker of the House:

Your Committee on Claims and Accounts, to whom was referred House bill No. 401, a bill to be entitled "An act to grant a pension to Martha Merchant, surviving wife of Berry Merchant, deceased."

Have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do pass, with the following amendment:

Amend by striking out of section 1 all the words after the word "granted" and substituting in lieu thereof after the word "granted" the following, "a pension of $150 per annum, commencing from the 1st day of January, 1897."

BERTRAM, Chairman.

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiell, Speaker of the House:

Your Committee on Claims and Accounts, to whom was referred House bill No. 562, a bill to be entitled "An act to appropriate $71.50 for the relief of J. T. Stanfield, and that the Comptroller draw his warrant for same."

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.

BERTRAM, Chairman.

By Mr. Rogers, chairman:

Committee Room,
Austin, Texas, March 8, 1897.
Hon. L. T. Dashiell, Speaker of the House.

Your Committee on Constitutional Amendments, to whom was referred House joint resolution No. 35, to amend section 3, article 11, of the Constitution of the State of Texas, relating to subsidizing of railroads by counties now without railroads; have had the same under consideration, and I am instructed to report the same back to the House with the recommendation that it do pass.

ROGERS, Chairman.

By Mr. Dies, chairman:

Committee Room,
Austin, Texas, March 9, 1897.
Hon. L. T. Dashiell, Speaker of the House.

Your Committee on Engrossed Bills have carefully examined and compared House bill No. 396, a bill to be entitled "An act to amend article 616a of the Revised Statutes of the State of Texas of 1895, relating to the formation of independent school districts, and prohibiting towns within such districts from assuming control of the school therein while the independent districts exist."

And find the same correctly engrossed.

DIES, Chairman.

SPEAKER'S TABLE.

The Speaker laid before the House, as special order for to-day.

House bill No. 176, a bill to be entitled "An act to quiet titles to lands located and surveyed by virtue of land certificates granted under the act of the Legislature of the State of Texas, entitled an act granting to persons who have been permanently disabled by reason of wounds received while in the service of this State or of the Confederate States, a certificate for 1280 acres of land, approved April 9, 1881, and to validate patents issued on such locations and surveys."

The bill was read second time, and further consideration was postponed to take up the pending business, same being House bill No. 9, on its engross-
ment, with amendment by Mr. Rogan pending.

On motion of Mr. Turner, further consideration of House bill No. 9 was postponed until 10 o'clock a.m. for the purpose of placing before the House on its second reading, with majority favorable and minority adverse reports thereon,

House bill No. 328, a bill to be entitled "An act to provide for the appointment of a receiver of the estates of an insolvent debtor, and providing for an injunction in cases where an insolvent debtor has executed a mortgage or deed of trust, preferring fraudulent claims."

The bill was laid before the House, and was read second time, and the majority report was adopted.

Mr. Turner offered the following amendment to the bill:

Amend by striking out all of the bill after the enacting clause, and substitute in lieu thereof the following:

"Section 1. That hereafter when any insolvent debtor, or debtor in contemplation of insolvency, shall execute a mortgage or deed of trust for the benefit of certain preferred creditors, and shall include in the list of preferred creditors any creditor whose claim or account is fictitious or fraudulent, a receiver of such mortgaged property may be appointed by any judge having jurisdiction thereof, as hereinafter provided.

"Sec. 2. Any creditor of such insolvent debtor whose claim has not been preferred, and who desires a receiver of such mortgaged property, may present an application therefor to any judge having jurisdiction of the subject matter, in either term time or vacation. Such application shall state the amount and nature of his claim, the names and residence, if known, of all the preferred creditors, and the amounts of their respective claims; the names and residence, if known, of the mortgagor and mortgagee; the value of the mortgaged estate and where situated, if known, and shall specify the particular claim or claims alleged to be fraudulent or fictitious; such application may contain a prayer for an injunction restraining such mortgagee or trustee from disposing of the mortgaged property, pending a final hearing of the application; provided, after any application for the appointment of a receiver has been made, any other of the non-preferred creditors of such insolvent debtor, may make themselves parties to the original proceedings by filing a statement in writing, declaring that they support and adopt the original application as presented, and that they make themselves equally liable with the original applicant or applicants; and upon the filing of such ancillary application, the parties thereto shall be held equally liable with the original applicant or applicants for all damages and costs that may be adjudged against them or either of them, upon final hearing.

"Sec. 3. Upon presentation of the application herein provided for, the judge having jurisdiction thereof shall direct that a citation be issued and served upon the mortgagor and mortgagee, and the creditor or creditors whose claim or claims are alleged to be fraudulent or fictitious, commanding them and each of them to appear on a day certain to answer such application. The citation provided for in this section shall be executed and returned in the manner provided by law for the services of citations in other civil suits, and the proceedings hereunder shall be governed by the rules governing other civil actions: provided, that the service of citation hereunder shall be sufficient.

"Sec. 4. Should such application contain a prayer for injunction, the judge to whom the same is presented shall issue a writ of injunction, restraining the mortgagee or trustee from further action under the mortgage or trust deed, and from selling or otherwise disposing of such mortgaged property, pending a hearing of such application. The writ of injunction herein provided for, shall be issued and served as in other cases; provided, that no writ of injunction shall issue until applicant shall have executed a bond, as hereinafter provided for.

"Sec. 5. Before any injunction shall issue, as provided for in the preceding section, the applicant shall execute a bond, with two or more good and sufficient sureties, to be approved by the judge issuing the writ, in such amount as the judge shall fix, payable to the creditors named in the mortgage, and conditioned that the applicant will pay all such costs and damages as may be adjudged against him for wrongfully suing out such injunction.

"Sec. 6. If upon final hearing, it shall be made to appear to the satisfaction of the judge trying the case, that any of the claims preferred are fictitious or fraudulent, a receiver shall be appointed, and thereafter such mortgaged estate shall be administered under
the order of the court appointing the receiver.

"Sec. 7. When a receiver is appointed under the provisions of this act, and before he enters upon his duties, he shall be sworn to faithfully perform them, and shall be required to execute a bond, with two or more good and sufficient sureties, to be approved by the judge appointing him, in double the amount of the mortgaged estate, and conditioned that he will faithfully discharge all duties required of him as such receiver, and that he will obey the orders of the court appointing him.

"Sec. 8. Upon giving the bond and taking the oath provided for in the preceding section, such receiver shall immediately take possession of the mortgaged property and shall at once dispose of the same as directed by the court, and if claims, accounts, notes, or other evidence of indebtedness are included in the mortgage or trust deed, he shall use due diligence to collect the same, and from the proceeds of such sales and collections, he shall pay: 1st. All the costs incurred in the appointment of a receiver. 2nd. The fees and commissions of the receiver as fixed by the court. 3rd. The creditors named in the mortgage or deed of trust, in the exact order therein named; provided, no claim that has been adjudged fraudulent or invalid, either in whole or in part, shall be paid. 4th. The debt of the original applicant for the receivership. 5th. The debts of the ancillary applicants, if any, in the order of the filing of such applications; provided, that if two or more creditors join in the original application for receivership and the funds in the hands of the receiver, after the payment of the costs, commissions and the preferred creditors, be not sufficient to pay each in full, then each of such original applicants shall be entitled to a pro rata share of such funds, in proportion to the amount of their respective claims; and, provided further, that a like rule in the distribution of the funds in the hands of the receiver, after the payment of the claims of the original applicants, shall apply to all creditors, who join in any ancillary application.

"Sec. 9. Should the mortgagee or trustee fail to deliver possession of the mortgaged property to the receiver hereunder appointed, the judge or court issuing same shall issue a writ of possession therefor, directed to the sheriff of the proper county, commanding him to seize such mortgaged property and to deliver the same into the possession of the receiver.

"Sec. 10. Whenever any insolvent debtor, or debtor in contemplation of insolvency, shall execute a mortgage deed of trust or other instrument in writing, preferring any claim, account, promissory note or other debt, which at the time of the execution of such instrument is barred by the statutes of limitation; or shall appoint as trustee or mortgagee any former clerk, employee or relative of such insolvent debtor; or shall fail to attach to such instrument, a sworn inventory and appraisement of such mortgaged property; or shall fail to file therewith a sworn statement of all his liabilities, setting forth the names and residences of his creditors, the amounts owing to each creditor and the nature, character, cause and consideration of each debt; or shall fail to acknowledge such instrument before some officer authorized by law to take acknowledgments; or shall fail to cause such instrument to be recorded in the records of bonds and mortgages in the county or counties where such property is situated, and wherein said instrument was executed, then, or in either of the above events, such fact shall be deemed sufficient grounds for the removal of such trustee or mortgagee and the appointment of a receiver, in the first instance, upon the application of any non-preferred creditor of such insolvent debtor.

"Sec. 11. Whenever any insolvent debtor, such as is mentioned above, shall execute any such instrument as described in the preceding section, and shall include in the list of preferred creditors the claim, debt or account of any relative within the third degree by consanguinity or affinity, the proof of such relationship shall be deemed prima facie evidence that such claim is fraudulent and fictitious, and thereafter the burden of proving the genuineness of such claim, debt or account shall be cast upon the creditor whose claim is contested and the fact that such preference has been made, shall be deemed sufficient grounds for the appointment of a receiver of such mortgaged property upon the application of any of the creditors of such insolvent debtor.

"Sec. 12. If any creditor of any insolvent debtor, whose claim has not been preferred, shall at the time of presenting the application provided for in section 2 of this act, file therewith
his affidavit in writing, stating that he has reason to believe and does believe that certain preferred creditor's claims, naming them, are fictitious or fraudulent, the judge to whom such petition or application is presented, may immediately appoint a temporary receiver, and at the same time issue the injunction provided for in section 4; provided that such temporary receiver, before he enters upon the discharge of his duties, shall qualify as such temporary receiver as provided for in section 7 of this act, and thereafter such temporary receiver shall exercise the authority and powers herein conferred, subject to the orders of the court making the appointment.

"Sec. 13. Before any temporary receiver shall be appointed as herein provided, the applicant or applicants therefor shall execute a bond with two or more good and sufficient sureties, to be approved by the judge making such appointment, in such an amount as the judge may fix, payable to the defendants named in the application and conditioned that applicant or applicants will pay all such damages and costs as may be adjudged against them or either of them on final hearing.

"Sec. 14. In all cases when the application for the appointment of a receiver, either permanent or temporary, as herein provided for, shall be accompanied by the affidavit of the applicant, as provided for in section 12 of this act, the burden of proving the genuineness and validity of such contested claims shall rest upon the creditor whose claims are contested alleging them to be fraudulent or fictitious.

"Sec. 15. At any time within twenty days after the appointment of any temporary receiver, under the provisions of this act, such appointment may be vacated upon motion, in writing, signed and sworn to by the mortgagor and the creditor or creditors whose claims are contested, alleging the invalidity of such contested claims and accompanied by satisfactory proof of the genuineness thereof.

"Sec. 16. Whenever any such mortgage, deed of trust or other instrument in writing, as is mentioned in section 1 of this act, shall have been executed and the trustee or mortgagee therein named shall fail or neglect within five days thereafter to execute a bond in double the value of such mortgaged property, to be approved by the county judge of the county wherein such property is situated or wherein such instrument was executed, payable to such county judge and his successors in office, conditioned for the faithful discharge of his duties as such mortgagee or trustee, such fact and the proof thereof shall be deemed sufficient grounds for the appointment of a receiver upon the application of any of the creditors of such insolvent debtor.

"Sec. 17. Upon the presentation of an application for the appointment of a receiver under any of the provisions of this act, the applicant or applicants, either original or ancillary, may examine, ex parte, the mortgagor, mortgagee or the preferred creditor or creditors, whose claims are contested, or all of them upon interrogatories filed with the application, or subsequent thereto, and in such case it shall not be necessary to give notice of the filing of such interrogatories or to serve a copy thereof on the person or persons whose answers are sought before the commission shall issue; nor shall it be any objection to such interrogatories that they are leading in character.

"Sec. 18. In all other respects the disposition provided for in the preceding section shall be governed by the rules of evidence and the provisions of articles 2292 to 2298, inclusive, of chapter 3, title 40, of the Revised Civil Statutes of this State.

"Sec. 19. In all other respects the receivership provided for under this act shall be governed by the general law of this State providing for the appointment of receivers, and this act is hereby declared to be cumulative of any other remedies given by law to creditors.

"Sec. 20. The fact that there is no law now in force in this State for the appointment of a receiver of the estates of insolvent debtors, and the fact that the system of preferring creditors is frequently abused by dishonest debtors, and the fact that there is no law in force in this State governing such system or under which such abuses can be detected and prevented, create an emergency and an imperative public necessity that the constitutional rule requiring 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 said rule is hereby suspended, and it is so enacted."

Adopted.
Mr. Turner offered the following amendment to the bill as amended:

Amend by adding thereto, after section 17, two additional sections, to be known as sections 17a and 17b, as follows:

"Section 17a. Hereafter, if any insolvent debtor or debtors, in contemplation of insolvency, shall execute any mortgage or trust deed whereby any of his creditors are preferred above others, and shall include among such preferred claims any debt that is fraudulent or fictitious, either in whole or in part; or if any mortgagee or trustee of such debtor, acting under any such preference mortgage or deed of trust, shall pay any claim of any creditor named therein, knowing same to be fraudulent or fictitious, in whole or in part; or if any creditor named in such preference mortgage or deed of trust shall demand or accept any benefit thereunder, knowing his claim to be fraudulent or fictitious, in whole or in part, then such mortgagee, mortgagee or creditor, as the case may be, shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for a term of years not less than two nor more than ten.

Sec. 17b. Hereafter it shall be unlawful for any mortgagee or trustee acting under any preference mortgage or trust deed to pay any claim of any preferred creditor, which claim is not verified by the affidavit of such creditor, stating that such claim is just, true and correct, and that all lawful payments and credits have been allowed thereon; and likewise it shall be unlawful for any such preferred creditor of any insolvent debtor to demand, accept or receive payment of his claim, or any part thereof, without having first filed with such mortgagee or trustee his affidavit in writing as above prescribed; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum equal to the amount of said claim, debt or account."

Amend caption by adding thereto after the word "claims," in line 9, the following, "and to regulate the making of preference mortgages or deeds of trust, and to provide penalties for violations thereof."

Adopted.

Mr. Bumpass offered the following amendment:

Amend by adding at close of section 12, page 5, "Provided that the receiver shall receive for his compensation not more than 2½ per cent of the value of the estate so mortgaged, and the attorneys shall not receive more than 2½ per cent of the value of such estate so mortgaged."

Adopted.

Pending consideration of House bill No. 328.

The House resumed consideration of House bill No. 9, the Evans assignment bill, on its engrossment, with amendment by Mr. Rogan pending.

Mr. Love offered the following substitute for the amendment:

Amend section 18 by adding thereto the following: "This section shall not be construed to prohibit preferences in favor of landlords for three months' rent; in favor of employees for three months' wages; in favor of estates, heirs and wards for debts due as executors, administrators and guardians; in favor of the State, county and city or town for taxes."

On the substitute by Mr. Love, yeas and nays were demanded by Mr. Love, Mr. Welch and Mr. Wolters.

The substitute was lost by the following vote:

Yeas—46.
Barbee.  Jones.
Benson.  Kirk.
Blackburn.  Logan.
Brewster.  Love.
Brown.  Meade.
Bumpass.  Melton.
Carpenter.  Morton.
Carswell.  Neighbors.
Conoly.  Peery.
Cureton.  Schlick.
Dean.  Seabury.
Dickinson.  Shropshire.
Doyle.  Skillern.
Drew.  Smith.
Edwards.  Stamper.
Evans of Hunt.  Stokes.
Ewing.  Thomas.
Felld.  Thompson.
Fields.  Wall.
Garrison.  Wallace.
Graham.  Welch.
Hensley.  Williams.
Hill of Travis.  Wolters.

Nays—52.
Alexander.  Curry.
Ayers.  Dennis.
Barrett.  Dies.
Bell.  Evans of Grayson.
Bertram.  Flint.
Bird.  Freeman.
Blair.  Gilboough.
Bounds.  Good.
Brigance.  Green.
Burns.  Hill of Gonzales.
Callan.  Holland of Burnet.
Crawford.  Holland of Harris.

March 9, 1897  HOUSE JOURNAL.  507
Humphrey. Reubell.
Kimbell. Rhea.
Lotto. Rogan.
Maxwell. Savage.
McGaughey. Smyth.
McKamy. Staples.
McKellar. Strother.
Moore of Lamar. Thaxton.
Mundine. Tracy.
O’Connor. Tucker.
Oliver. Turner.
Patterson. Vaughan of Collin.
Pfeuffer. Ward.
Porter. Wood.

Absent.

Beard. Mason.
Beard. Robbins.
Coller. Rogers.
Fisher. Shelbourne.
Lillard. Wilcox.

Excused.

Bean. Mercer.
Boyd. Moore, Fort Bend.
Burney. Morris.
Childs. Pitts.
Crowley. Randolph.
Dorroh. Relger.
Henderson. Rudd.
Martin. Vaughan, Guadalupe.
McFarland.

PAIRED.

Mr. Harris (present), who would vote "nay," with Mr. Fisher (absent), who would vote "yea."

Mr. Sinder (present), who would vote "yea," with Mr. Reiger (absent), who would vote "nay."

The amendment by Mr. Rogan was adopted.

Mr. Tracy offered the following amendment to House bill No. 9.

Strike out all after the words "be it enacted by the Legislature of the State of Texas," and insert in lieu thereof the following:

"Section 1. That it shall hereafter be unlawful for any insolvent debtor, when in a failing condition, to execute any chattel mortgage or trust deed on any property for the purpose of fraudulently preferring one creditor above another."

"Art. 1. That any debtor hereafter executing any chattel mortgage or trust deed, who shall in said trust deed or chattel mortgage, make or name any preferred creditor, said chattel mortgage or trust deed shall be void, unless said failing debtor or assignor shall attach to said trust deed his affidavit in writing stating the claims and the amounts of said claim and the date of same and the circumstances under which debt or debts were preferred, and the same shall not be admitted to record and shall not be evidence of any indebtedness, which affidavit shall be sworn to by some officer authorized to administer oaths under the laws of the State of Texas."

"Art. 2. That no preferred creditor named in any chattel mortgage or trust deed hereafter made in the State of Texas, shall receive from the trustee or other parties executing the terms of said trust deed or chattel mortgage unless said preferred creditor shall file with said trustee his affidavit in writing, stating that the claim is just and bona fide, giving the date of the origin of said claim and the circumstances under which said claim originated. Any preferred creditor failing to file such affidavit, shall forfeit any right he may have to his claim against said estate and such forfeiture shall inure to the benefit of all the creditors of said estate.

"Art. 3. Any creditor of said assignor who desires shall have the right, at any time within thirty days from the date of the execution of said trust deed or mortgage, to file his application with any court within the State of Texas having competent jurisdiction of the amount in controversy, in which he shall state that he verily believes that some of the preferred creditors named in said trust deed or mortgage, giving the names and amounts, are fraudulent; and upon the filing of such complaint, it shall be the duty of the court, either in term time or vacation, to at once issue citation to the assignor, the trustee or other party in charge of said estate, and to the preferred creditor, commanding them at once to come before the court and bring all the notes, accounts, books and other papers, which notes, accounts, books and other papers may be examined in open court; and upon the failure of the assignor, trustee or other officer in charge of said estate or preferred creditor to appear before the court and make an exhibit of their notes, accounts, books or other papers, it shall be prima facie evidence of fraud on their part; either party may have processes for witnesses returnable to the court at the day fixed by the court for the hearing of the case; and the court will proceed to try said cause as other cases.

"Art. 4. That the trustee or other person taking charge of the estate shall, within five days from the date of the execution of said trust deed or chattel mortgage, have taken a com-
plete inventory of all the property conveyed in said trust deed or chattel mortgage, showing the cash value of said estate, and execute, at the time he delivers said inventory, his bond equal in amount to said stock, with two or more sufficient sureties, to be approved by the county judge of said county."

Mr. Humphrey offered the following amendment to the amendment:
Add to article 8 after the word "cases" the following: "Provided, that in all such preferences the burden of proof shall be upon such preferred creditor to show the justness of his claim."

And add another article as follows:
"Article 5. If any person shall make any false affidavit to any chattel mortgage or deed of trust, or to any claim preferred therein, he shall be deemed guilty of a felony and upon conviction thereof shall be confined in the State penitentiary at hard labor for a term of not less than two nor more than five years."

(Mr. Seabury in the chair.)

The amendment by Mr. Humphrey was adopted.

Mr. Bumpass offered the following amendment to the amendment:
Amend by adding at close of section 4 the following: "The trustee shall receive in full for his services the amount fixed by the court, not to exceed 2½ per cent of the estate so assigned, and the attorney may receive the amount fixed by the court not to exceed 2½ per cent of the value of the estate so assigned."

Adopted.

Mr. Rogan offered the following amendment to the amendment:
Amend section 3, line 4, by striking out after the word "days" the words "from the date" and insert, in lieu thereof the following words, "after he has received either actual or constructive notice."

Accepted by Mr. Tracy.

Pending consideration of House bill No. 9, with amendment (as amended) by Mr. Tracy pending,

Mr. Blair moved to adjourn until 9:30 o'clock a.m. next Thursday; and Mr. Evans of Grayson moved to adjourn until 3 o'clock p.m. to-day.

Question recurring on the longest time first, yeas and nays were demanded by Mr. Carpenter, Mr. Boyd and Mr. Evans of Grayson.

The motion was lost by the following vote:

Yeas—24.

Nays—76.

Absent.

Excused.

FORTY-FIRST DAY.

Hall House of Representatives,
Austin, Texas,
Wednesday, March 19, 1897.

The House met at 9 o'clock a. m. pursuant to adjournment.

Speaker Dashell in the chair.

Roll called and the following members present.

Alexander. Gilbough.
Ayers. Graham.
Bailey. Green.
Barbee. Harris.
Barrett. Hensley.
Bell. Hill of Gonzales.
Benson. Hill of Travis.
Bird. Holland of Burnet.
Blackburn. Holland of Harris.
Blair. Jones.
Bonds. Kirk.
Boyd. Lillard.
Brewster. Logan.
Brigance. Love.
Browne. Manson.
Burns. Humphrey.
Callan. Martin.
Carpenter. Maxwell.
Carswell. McGaughhey.
Coller. McKamy.
Conoly. McKellar.
Crawford. Mercer.
Cureton. Moore of Lamar.
Curry. Morris.
Dean. Morton.
Dennis. Mundine.
Dickinson. Neighbors.
Dies. O'Connor.
Doyle. Oliver.
Drew. Peery.
Edwards. Pfeiffer.
Evans of Hunt. Pitts.
Evans of Grayson. Porter.
Ewing. Randolph.
Field. Reubell.
Fields. Rhea.
Fisher. Rogan.
Flint. Rudd.
Freeman. Savage.
Garrison. Schlick.

Seabury. Thompson.
Shelburne. Tracy.
Shropshire. Tucker.
Skillern. Turner.
Sluder. Vaughan of Collin.
Smith. Ward.
Smyth. Welch.
Stamper. Wilcox.
Staples. Willams.
Stokes. Wolters.

A quorum was announced present.

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

Pending reading of the Journal of yesterday,
On motion of Mr. Kirk, further reading was dispenseu with.

GRANTED LEAVE OF ABSENCE.

On account of important business:
Mr. Meade for to-day, on motion of Mr. Moore of Lamar.
Mr. Burney for to-day, on motion of Mr. Stokes.
Mr. Robbins for to-day, on motion of Mr. Evans of Hunt.
Mr. Good and Mr. Brigance for to-day, on motion of Mr. Bird.
On motion of Mr. Bailey, Mr. Boggs, Sergeant-at-Arms, was excused for to-day, on account of important business.

On account of sickness:
Mr. Martin for last Monday and Tuesday, on motion of Mr. Ayers.
Mr. Dorroh for to-day, on motion of Mr. Bealrd.
Mr. Patterson indefinitely, on motion of Mr. Benson.
Mr. Freeman moved to reconsider the vote by which Mr. Patterson was excused indefinitely.

On motion of Mr. Wolters, the motion was tabled.

PETITIONS AND MEMORIALS.

By Mr. Graham:
A petition of C. Gurnsey, asking for certain amendments to the hog law.
Referred to the Committee on Agricultural Affairs.