MINORITY REPORT.
Committee Room, Austin, Texas, Feb. 20, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: We, a minority of your Committee on Penitentiaries, to whom was referred Senate bill No. 43, do not concur with the majority of your committee, and beg to recommend that it do not pass.

PEFEUFFER, GREENWOOD, CONOLY, VAUGHAN.

Committee Room, Austin, Texas, Feb. 21, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on Towns and City Corporations, to whom was referred Substitute Senate bill No. 55, a bill to be entitled “An Act to establish and create in each of the cities and towns and villages of this State a State court, to be known as the Corporation Court in such city, town or village, and to prescribe the jurisdiction and organization thereof, and to abolish municipal courts,” have had the same under consideration, and I am instructed to report it back to the House with the recommendation that it do pass, with the following amendment:

“Amend by adding to the end of Section 15 the following words: ‘In all such cases the fines imposed on appeal, together with the costs imposed in the corporation court and the court to which the appeal is taken, shall be collected of the defendant and his bondsmen, and such fine and the costs of the corporation court shall, when collected, be paid into the treasury of the city, town or village. When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance of such city, town or village providing for the custody of prisoners convicted before such corporation courts, and said city, town or village shall be liable to the officers of the court to which the appeal is taken for the costs due them when such defendant has fully discharged such fine and costs. Such corporation court shall hold no terms, and shall be at all times open for the transaction of business.”

McKAMY. Chairman.

FURTHER TIME GRANTED FOR CONSIDERATION OF BILLS.

House bills Nos. 354, 419, 576, 423, 477, 550, 569, 612, 232 and 227, on request of Mr. Schluter, Chairman of the Committee on Revenue and Taxation.

SENATE BILLS ON FIRST READING.

Also the following Senate bills, which were received from the Senate, were read first time and referred as follows:

Senate bills Nos. 89 and 47 to Judiciary Committee No. 1.

Senate bills Nos. 170 and 125 to the Committee on Towns and City Corporations.

BILLS RECOMMITTED.

Senate bill No. 67 (reported adversely), to the Committee on State Affairs, on motion of Mr. Barrett (upon request of Mr. Shelburne, Chairman).

House bill No. 402 (reported adversely), to the Committee on Public Lands and Land Office, on motion of Mr. Wright.

At 12:53 p.m., on motion of Mr. Powell, the House, in commemoration of the One Hundred and Sixty-seventh Anniversary of the birth of George Washington, adjourned until 9:30 o'clock a.m., tomorrow.

THIRTY-NINTH DAY.

Hall of the House of Representatives, Austin, Texas, Thursday, February 23, 1899.

The House met at 9:30 o'clock a.m., pursuant to adjournment.

Speaker Sherrill in the chair.

Roll called and the following members present:

Allen of Colorado. Collins.
Ayers. Cross.
Bailey. Culp.
Barbee. Dean.
Barrett. Decker.
Bean. Derden.
Beaty. Dies.
Bount. Eckols.
Bolin. Ellis.
Bridgers. Evans of Fannin.
Browne. Evans of Grayson.
Caldwell. Frost.
Calvin. Garner.
Chambers. Garrett.
Childers. Gill.
Childe. Goodman.
Clements. Graham.
Cooke. Greenwood.
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Grogan. Poole.
Grubbs. Powell.
Hamilton. Prince.
Howard. Robertson of Bell.
Hurley. Rochelle.
Jones. Rogers.
Kittrell. Russell.
Lake. Sansom.
Lloyd. Shropshire.
Marsh. Smith of Grayson.
Masterson. Smith of Collin.
Maxwell. Staples.
McAnally. Teague.
McKamy. Terrell.
McKellar. Thomas of Wise.
Meitzen. Wright.
Pitts.

PENDING BUSINESS.

When the House adjourned yesterday, it had under consideration,
Substitute House bill Nos. 275 and 313, relating to investment of the permanent public free school fund, an engrossment, with amendment pending.

SPECIAL ORDERS FIXED.

House bill No. 48, relating to legal holidays, for Tuesday, February 28, 11 o'clock a.m., on motion of Mr. Terrell, pending business being suspended for same.
House bill No. 126, relating to certain animals running at large, for Wednesday, March 8, 11 o'clock a.m., on motion of Mr. Lloyd, pending business being suspended for same.
House Joint Resolution No. 20, relating to the judicial system of Texas, for Tuesday, March 7, 11 o'clock a.m., pending business being suspended for same.
House bill No. 130, relating to fees and taxes to be collected by the Secretary of State, for Thursday, March 2, 11 a.m., on motion of Mr. Ratliff, pending business being suspended for same.
House bill No. 452, relating to the public domain, for Tuesday, March 7, 10:30 a.m., on motion of Mr. Masterson, pending business being suspended for same.
House bill No. 400, to grant permission to B. F. Gohlson and J. W. Benson, or their assigns, to bring suit against the State, for Monday, February 27, 10 o'clock a.m., on motion of Mr. Phillips of Lampasas, pending business being suspended for same.
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BILLS SIGNED BY THE SPEAKER.

The Speaker signed in the presence of the House, after giving due notice there­of, and their captions had been read several times, the following bills:

Substitute House bill No. 54, "An Act to repeal Article 492, Chapter 2, of Title XIII, of the Penal Code of the State of Texas, and to amend Article 491, of Chapter 2, Title XIII, of the Penal Code of the State of Texas, and declaring an emergency."

House bill No. 123, "An Act authorizing the Southern Kansas Railway Company of Texas to purchase the Panhandle Railway, and to operate the same under the charter of the Southern Kansas Railway Company of Texas, as a part of its own line, with the right to extend the same, and to construct branches there­from, by amendment of its charter, under the General Laws of the State of Texas."

Mr. Pfeuffer moved to suspend pending business to take up House bill No. 279, relating to free passes, and make it a special order for Wednesday, March 1, 10 o'clock a. m.

Yeas and nays were demanded by Mr. Pfeuffer, Mr. Henderson of Lamar and Mr. Cole.

The motion was lost by the following vote:

Yeas—60.

Nays—51.

"I vote 'no,' because there is much business pending that is of much greater importance to the people."

On motion of Mr. Willacy, pending business was suspended to take up, with Senate amendments, House bill No. 190, relating to destruction of the Mexican boll weevil.

The bill was laid before the House, and the amendments were read. Mr. Willacy then moved that the House do concur in the Senate amendments.

The amendments were concurred in by the following vote:

Yeas—112.

Absent—Excused.

Evans of Fannin.

Absent.
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Mr. Powell moved to suspend pending business to take up House bill No. 180, relating to Johnson grass, to make it a special order for Friday, March 3, 3 p.m.

Lost.

The House then resumed consideration of Substitute House bills Nos. 275 and 313, relating to investment of the permanent public free school fund, on engrossment with amendment by Mr. Rochelle, as substituted for the amendment by Mr. Prince and amendment thereto by Mr. Cole, pending.

The amendment as substituted was lost.

The Speaker here announced as special order for this hour, 10:30 a.m., Substitute House bill Nos. 136, 234, 245 and 267, the general occupation tax bill, on second reading, the same having been reported by the committee as a substitute to the several bills named.

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

Mr. Childs moved to postpone indefinitely further consideration of the bill.

(Mr. Bailey in the Chair.)

After consideration by the House, Mr. Masterson moved the previous question on the motion to postpone, and the main question was ordered.

Yeas and nays were demanded by Mr. Childs, Mr. Ellis and Mr. Conoly.

The motion to postpone indefinitely was lost by the following vote:

Yeas-15.

Bailey. Murphy.

Chambers. Murray.


Clements. Pitts.

Kittrell. Rogers.

McClellan. Tarkington.

Meitzen. Walton.

Morrow. Wooten.

Nays-95.

Adams. Conoly.


Allen of Hopkins. Dean.

Ayers. Decker.

Barbee. Derden.

Barrett. Dies.

Bean. Eckols.

Beaty. Ellis.

Blount. Evans of Fannin.

Bolin. Evans of Grayson.

Bridgers. Frost.


Calwell. Garrett.

Calvin. Gill.

Childers. Goodman.

Cocke. Graham.

Cole. Greenwood.

Collins. Grubbs.
Question recurring on engrossment of the bill, Mr. Adams moved that it be considered by subdivisions, which motion prevailed.

The first paragraph of Section 1 was read.

Mr. Schluter offered the following amendment:

"Amend by striking out 'shall,' in line 13, page 1, and insert in lieu thereof the following, 'be and the same is hereby amended so as to.'"

Adopted.

Mr. Allen of Hopkins offered the following amendment:

"On page 1, in line 17, after the word 'paid,' amend by striking out the word 'annually' and inserting 'quarterly.'"

Mr. Tarver offered the following substitute for the amendment:

"After word 'annually' insert 'paid quarterly in advance.'"

Mr. Greenwood offered the following substitute for the pending amendments:

"Substitute for amendment and amendment to amendment, on page 1, in line 17, amend by adding after the word 'annually,' 'and said occupation tax may be paid quarterly or annually, at the option of the tax-payers.'"

Mr. Phillips moved to table the substitute, and the motion was lost.

After further consideration by the House, Mr. Dies moved the previous question on pending amendments, and the main question was not ordered.

After yet further consideration by the House, Mr. Kennedy moved the previous question on pending amendments, and the main question was ordered.

Adopted by the following vote:

Yeas—66.

Adams.       McKamy.
Allen of Hopkins.    McKellar.
Allen of Colorado.    Metzzen.
Ayres.       Mercer.
Bailey.      Morris.
Bean.        Murphy.
Caldwell.    Oliver.
Calvin.      Palmer.
Chambers.    Parish.
Childers.    Pfeiffer.
Cocke.       Pitts.
Cole.        Poole.
Collins.    Prince.
Cross.       Ratcliff.
Derdan.     Sansom.
Dies.        Shropshire.
Eckols.    Smith of Grayson.
Ellis.       Staples.
Evans of Fannin.    Stripling.
Evans of Grayson.    Sutherland.
Frost.       Tarkington.
Greenwood.   Tarver.
Grogan.      Tate.
Grubbs.      Teagle.
Hamilton.    Terrell.
Howard.      Thomas of Wise.
Hurley.      Thomas of Fannin.
Jones.       Tompkins.
"Gittrell."    Tucker.
Lane.        Walton.
Maxwell.    Wells.
McClellan.  Willard.

Nays—43.

Blount.       Garrett.
Bolin.        Gill.
Bridgers.    Goodman.
Browne.      Graham.
Comely.      Kennedy.
Dean.         Lake.
Decker.      Lillard.
Little.    Robertson of Bell.
Livsey.    Rochelle.
Loyd.      Russell.
Marsh.     Savage.
Masterson. Schluter.
McAnally.  Scurry.
Monroe.    Shelburne.
Morrow.    Smith of Collin.
Murray.    Stewart.
Neff.      Vaughan.
Nolan.     Wheless.
Peery.     Wooten.
Phillips of Camp. Wright.
Powell.    Absent.

Barrett.   McFarland.
Beaty.     Rogers.
Garner.    Willacy.

Absent—Excused.

Barbee.    Gordon.
Bennett.   Henderson, Brazos.
Crawford.  Looney.
Culp.      McDowell.
Dorroh.    Robertson, Harrison
Goodlett.  Shannon.

Question then recurred on the amendments as substituted.

Adopted.

Subdivision 1 of the bill was then read.

Mr. Shropshire offered the following amendment:

"Amend by adding after the word 'oaths,' in line 30, page 2, the following:

'Provided, nothing in this act shall be construed so as to apply to any person or persons dealing exclusively in grain or farm products where such person or persons buy direct from the producer.'"

Mr. Ayers offered the following substitute for the amendment:

"Amend subdivision 1 by adding after the word 'dollars,' in line 9, page 2, the words, 'Provided, that the word merchant, as herein above used, shall not apply to dealers in grain, hay and other farm products, and provided further, that there shall be collected from every dealer in grain, hay and other farm products the sum of sixteen dollars per year, payable annually.'"

Accepted by Mr. Shropshire.

Mr. Childers moved to table the amendment, and the motion was lost.

The substitute was adopted.

Question then recurred on the amendment as substituted, to which Mr. Powell offered the following amendment:

"Amend substitute by adding, 'Provided such dealers shall deal exclusively in such products.'"

Adopted.

On the substitute as amended, yeas and nays were demanded by Mr. Peery, Mr. Morrow and Mr. Childers.

Lost by the following vote:

Yeas—45.

Allen of Colorado. Monroe.
Ayers.        Morris.
Bailey.       Neff.
Barrett.      Oliver.
Bean.         Palmer.
Bolin.        Parish.
Calvin.       Powell.
Chambers.     Rochelle.
Cocke.        Russell.
Collins.      Sansom.
Dean.         Schluter.
Eckola.       Scurry.
Garner.       Shelburne.
Garrett.      Shropshire.
Gill.         Smith of Collin.
Goodman.      Stewart.
Graham.       Tate.
Masterson.    Teagle.
Maxwell.      Vaughn.
McAnally.     Wells.
McClellan.    Willacy.
McKamy.       Wooten.
McKellar.     

Nays—58.

Adams.        Meitzen.
Allen of Hopkins. Mercer.
Hlount.       Morrow.
Bridgers.     Murphy.
Caldwell.    Peery.
Childers.    Pfeuffer.
Derden.      Pitts.
Evans of Fannin. Poole.
Evans of Grayson. Prince.
Frost.        Ratcliff.
Greenwood.   Robertson of Bell.
Grubbs.      Savage.
Hamilton.    Smith of Grayson.
Henderson, Lamar. Stripling.
Howard.      Sutherland.
Hurley.      Tarkington.
Jones.       Tarver.
Kennedy.    Terrell.
Kittrell.    Thomas of Wise.
Lake.        Thomas of Fannin.
Lane.        Tompkins.
Lillard.    Tucker.
Little.      Walton.
Livsey.     Wheless.
Loyd.       Willrodt.
Marsh.      Wright.

Absent.

Beaty.        Ellis.
Childs.      Grogan.
Comely.      Nolan.
Decker.      Rogers.
Dies.        Staples.
Mr. Mercer offered the following amendment:

"Amend the bill in subdivision 1, page 1, and remove from line 2, page 2, and insert after line 19, page 1, down to the word 'dollars,' in line 2, page 2, and insert after line 2, page 2, and insert the following in lieu thereof:

"Subdivision 1. From the merchants whose annual purchases amount to one hundred and twenty-five thousand dollars ($25,000) or less than fifty thousand dollars ($50,000), ten dollars ($10.00); from every merchant whose annual purchases amount to one hundred and fifty thousand dollars ($50,000), twenty dollars ($20.00); from every merchant whose annual purchases amount to two hundred and fifty thousand dollars ($200,000), one hundred and forty dollars ($140.00)."

There was no objection raised, and the morning call was announced.

PETITIONS AND MEMORIALS.

By Mr. Maxwell:
Petition from seventy-three citizens of Travis county, asking that Kittrell's anti-gambling bill be passed. Read, and referred to Judiciary Committee No. 2.

By Mr. Ratliff and Mr. Barbee (by request): Petition from 230 citizens of Houston county, asking for the passage of a bill that will enable them to rid themselves of the measure known as the "hog law." Read, and referred to Committee on Stock and Stock-raising.

By Mr. Bailey:
Petition of 217 citizens of DeWitt county, asking for the passage of House bill No. 181, to levy a tax of 40 per cent. on the gross earnings of all persons, firms and corporations operating and leasing within this State the "round bale" system of packing cotton. Read, and referred to Committee on Revenue and Taxation.

By Mr. Terrell:
Petition from twenty-five citizens of Cherokee county, asking the Legislature...
to submit a constitutional amendment exempting manufactories from taxation for a period of ten years.
Read, and referred to Committee on Constitutional Amendments.

By Mr. Palmer:
Petition from thirty citizens of Erath county, asking for the repeal of the game law.
Read, and referred to Committee on Stock and Stock-raising.

By Mr. Beaty:
Petition from fifty farmers of Caldwell county, asking their representative to have the game law so amended as to allow deer to be killed from July 1st to February 1st of each year.
Read, and referred to Judiciary Committee No. 2.

By Mr. Phillips of Lampasas:
Petition from twenty-five citizens of Burnet county, asking for the passage of a just and equitable law regulating toll and manner of exchanging of grist mills of Texas.
Read, and referred to Judiciary Committee No. 2.

By Mr. Bean (by request):
Petition from thirty citizens of Jasper county, asking for the repeal of the game law.
Read, and referred to Committee on State Affairs.

By Mr. Garrett:
Petition from twenty-seven citizens of Bandera county, asking for the restoration of the civil and criminal jurisdiction to the county court of said county.
Read, and referred to Judiciary Committee No. 1.

By Mr. Allen of Colorado:
A memorial of twenty-five citizens of Colorado county, favoring legislation in behalf of the “round bale.”
Read, and referred to Committee on Agricultural Affairs.

By Mr. Masterson:
Petition of 188 citizens of Port Bend county, against the passage of the bill permitting surety companies making official bonds.
Read, and referred to Judiciary Committee No. 2.

Also petition from eighty-two citizens of Matagorda county, asking that the office of Fish and Oyster Commissioner be abolished.
Read, and referred to Committee on State Affairs.

By Mr. Caldwell:
Petition from Geo. S. Creer and 150 other citizens of Travis county and city of Austin, asking for the passage of a law to protect the people against fraudulent advertising concerns known as cooperative premium concerns, and operating by issuing certain kinds of stamps, now carrying on business in the various cities and towns in the State of Texas.
Read, and referred to Judiciary Committee No. 2.

Also petition from twenty-one colored citizens of Travis county, looking to the development of Prairie View Normal School, and the advancement of the educational interests of the colored race.
Read, and referred to Committee on Education.

BILLS AND RESOLUTIONS.

By Mr. Pfeiffer and Mr. Cocke:
House bill No. 619, A bill to be entitled “An Act to amend Title XXXVI, Chapter 9, Article 1750, of the Revised Civil Statutes of Texas of 1895, relating to judges and clerks of elections.”
(Provides by providing that in all special elections held in any county, the commissioners court thereof may direct by its order, entered of record, that such special election shall be held by one set of officers, to wit: by two judges and two clerks thereof.)
Read first time, and referred to Committee on County Government and County Finances.

By Mr. Wooten:
House bill No. 620, A bill to be entitled “An Act to give the Board of Regents of the University of Texas the absolute and exclusive management and control of the mineral lands of the University.
Read first time, and referred to Judiciary Committee No. 1.

By Mr. Stripling:
House bill No. 621, A bill to be entitled “An Act to create a more efficient road system for Nacogdoches county, Texas, and making the county commissioners of said county ex-officio road commissioners and prescribing their duties as such, and providing for their compensation as road commissioners, and providing for the appointment of road overseers, and defining their duties, and for the working of county convicts upon the roads of said county, and providing for officers fees and rewards for the capture of escaped convicts, and authorizing the working of county convicts partly upon the county convict farm, as well as upon the public roads, or partly upon both, in the discretion of the commissioners court, and making provision of act applicable as far as practicable, to convicts when worked on county farms, and to provide for the summoning of teams for road work, and
for an allowance of time of road service for same, and fixing a penalty for a violation of this act, and to repeal all laws in conflict with this act, as to Nacogdoches county, and to authorize the commissioners court of Nacogdoches county to create the office of superintendent of public roads and bridges for Nacogdoches county, and defining his duties, and providing for compensation for said superintendent, and prescribing bond to be given by said officer; providing that delinquent poll tax-payers shall be subject to three days' road duty; providing for the condemnation of any land needed for the widening, straightening, changing or draining of roads; providing for the taking of timber, gravel, earth, stone, or other necessary material for the improvement of roads, and giving persons summoned to work upon roads the right to be relieved from the discharge of such duty on the payment of specific sums of money herein stipulated."

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

By Mr. Cross:
House bill No. 622. A bill to be entitled "An Act to provide that in all civil cases in the district court nine jurors concurring and that in all civil cases in the county and justice courts five jurors concurring may bring in a verdict."

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

By Mr. Browne (by request):
House bill No. 623. A bill to be entitled "An Act to provide for the licensing of architects, and regulating the practice of architecture as a profession, and the appointment of a State Board of Examiners of Architects."

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

By Mr. Kittrell:
House bill No. 624. A bill to be entitled "An Act to amend Chapter 34, of the Acts of the Twenty-fifth Legislature, the same being an act entitled 'An Act to amend Article 2601, Chapter 6, Title Ll, of the Revised Civil Statutes of Texas, relating to bonds of guardians and sureties thereon, so as to authorize the giving of such bonds by companies organized in other States and authorized to do business in this State, and to validate bonds of guardians heretofore given in this State by companies organized under the laws of other States.'"

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

By Mr. Wells:
House bill No. 625. A bill to be entitled "An Act to amend Title XIII, Chapter 4, Article 499, of the Penal Code, so as to include in the amended article the willful injury or destruction of shade and ornamental trees and shrubbery belonging to public school buildings and churches, and prescribing a penalty for violation thereof."

(Provides a fine for such offense of not less than five nor more than one hundred dollars.)

Read first time, and referred to Judiciary Committee No. 2.

By Mr. Allen of Colorado:
House bill No. 626. A bill to be entitled "An Act to require the proof of the payment of all State and county taxes before any deed, mortgage or other instrument effecting the title or possession of the real estate described therein, shall be recorded in any of the counties of this State."

Read first time, and referred to Committee on County Government and County Finances.

By Mr. Whiteless (by request):
House bill No. 627. A bill to be entitled "An Act to regulate the practice of medicine and surgery; to license physicians, surgeons and midwives, and to punish persons violating the provisions thereof in the State of Texas."

Read first time, and referred to Committee on Public Health and Vital Statistics.

By Mr. Looney:
House bill No. 628. A bill to be entitled "An Act to amend Article 1537, Chapter 2, Title XXXII, of the Revised Civil Statutes of the State of Texas, regulating and prescribing the duties of the commissioners court."

(Amends by providing that it shall be the duty of commissioners courts to provide a suitable house in each justice precinct in which to hold the justice court.)

Read first time, and referred to Committee on County Government and County Finances.

By Mr. Bean:
House bill No. 629. A bill to be entitled "An Act to amend Article 3964, of the revised Civil Statutes of Texas, as amended at the Special Session of the Twenty-fifth Legislature."

(Amends by providing for the appointment of colored trustees to take the scholastic census of colored children.)

Read first time, and referred to Committee on Education.

By Mr. McLellan:
House bill No. 630. A bill to be entitled "An Act relative to county, city and town bonds; to provide for refunding, paying and exchanging the same; to issue new bonds for such purposes, and to regulate..."
the sale or exchange thereof, and declar-
ing an emergency.

Read first time, and referred to Com-
mittee on County Government and County
Finances.

By Mr. Bennet:
House bill No. 631, A bill to be entitled
"An Act to define and punish commercial
swindling."
(Makes it unlawful to label as Texas
manufactured goods that are not of Texas
manufacture, and provides as a penalty
for such offense a fine of not less than
fifty nor more than five hundred dollars.)

Read first time, and referred to Judi-
ciary Committee No. 2.

By Mr. Derden:
House bill No. 632, A bill to be entitled
"An Act to provide that no person in this
State who has held one and the same
State or county elective office for two
successive terms shall be eligible to said
office until after the expiration of two
years."

Read first time, and referred to Com-
mittee on State Affairs.

By Mr. Murphy:
House bill No. 633, A bill to be entitled
"An Act to amend Article 1015, Chapter
16, Title XXVII, of the Revised Statutes
of the State of Texas, relating to the
filing of transcripts in the Courts of Civil
Appeals, in appealed cases or cases car-
ried up on writ of error."

(Amends by providing that the appel-
ellant or plaintiff in error shall file the
transcript with the clerk of the Court of
Civil Appeals within sixty days from the
perfection of the appeal or service of the
writ of error; provided, that for good
cause the court may permit the trans-
script to be thereafter filed upon such
terms as it may prescribe.)

Read first time, and referred to Judi-
ciary Committee No. 2.

By Mr. Murphy:
House bill No. 634, A bill to be entitled
"An Act to amend Article 1387, Chapter
19, Title XXX, of the Revised Statutes
of the State of Texas, relating to appeals,
and prescribing the times in which cases
must be appealed from a final judgment
or judgments overruling motions for new
trials."

(Provides that in cases where the
party taking the appeal resides out of
the county, he shall have thirty days
after such final judgment or judgments
overruling a motion for a new trial in
which to file such appeal bond or affi-
davit in lieu thereof.)

Read first time, and referred to Judi-
ciary Committee No. 2.

By Mr. Allen of Hopkins:
House bill No. 635, A bill to be entitled
"An Act granting to John B. Colicicott,
a San Jacinto veteran, a pension from
the year 1889 to the year 1898."
(Appropriates the sum of one thousand
three hundred and fifty dollars for the
purpose of paying such pension. The bill
is accompanied by an affidavit showing
that due and legal notice had been given
of intention to apply to the Legislature
for this pension.)

Read first time, and referred to Com-
mittee on Finance.

By Mr. Stewart (by request):
House bill No. 636, A bill to be entitled
"An Act to amend Article 750, Chapter
6, Title VII, of the Code of Criminal
Procedure of the State of Texas, so as to
make it the duty of the court to assess
the punishment whenever the jury in any
criminal case shall find the defendant
guilty of a felony."

Read first time, and referred to Judi-
ciary Committee No. 2.

By Mr. Masterson (by request):
House bill No. 637, A bill to be entitled
"An Act to abolish the office of Fish and
Oyster Commissioner, and to vest the du-
ties thereof in the several justices of the
peace of those precincts whose boundary
lines border on or enclose the waters in
which fish, oysters, turtle, terrapin or
shrimp are taken, and to repeal Articles
2508, 2509, 2510, 2511, 2512, 2513d,
2517e, 2518f, 2518g, 2518h, 2518i and
2518j, of Title XLVIII, of the Revised
Civil Statutes of Texas, and to amend
Articles 2511, 2512, 2513, 2514, 2515, 2516, 2517 and
2518m, of the same; also to amend Arti-
cles 511, 513b, 529a, 529d, 529g, Section
9, 529l, and 529c, of Title XIII, Chapter
5, of the Penal Code of Texas."

Read first time, and referred to Com-
mittee on State Affairs.

By Mr. Garrett (by request):
House bill No. 638, A bill to be entitled
"An Act to restore to and confer upon
the County Court of Bandera county the
civil and criminal jurisdiction heretofore
belonging to said court, under the Con-
stitution and general laws of the State,
to conform the jurisdiction of the dis-
trict court to such change, and to repeal
all laws in conflict with the provisions
of this act."

Read first time, and referred to Judi-
ciary Committee No. 1.

By Mr. Masterson (by request):
House bill No. 639, A bill to be entitled
"An Act to authorize the mayor and city
council of the city of Alvin to issue five
thousand ($5,000) dollars in city bonds,
to sell the same to the highest bidder,
and to redeem certain outstanding war-
By Mr. Kittrell:

House bill No. 640, A bill to be entitled "An Act to require suits to be brought to collect back taxes and delinquent taxes due on lands as provided for in Chapter 103, of the Acts of the Twenty-fifth Legislature." Read first time, and referred to Committee on Revenue and Taxation.

By Mr. Oliver:

House bill No. 641, A bill to be entitled "An Act to define and declare what constitutes a gaming house, and to define the offense of keeping a gaming house or gambling house, and to define the offense of permitting a house to be used as a gaming house or gambling house, and to declare that the terms gaming house and gambling house are synonymous and equivalent, and to prescribe and define what shall be prima facie evidence of a violation of any of the provisions of this act, and to authorize, empower and direct the judge of any court in which a conviction is had for a violation of any of the provisions of this act, to issue necessary process to any peace officer to seize and destroy the tools, devices or implements used in the gaming house in which such violation occurs, and to fix a penalty or penalties for violations of the provisions of this act, and to repeal all laws in conflict herewith." Read first time, and referred to Judiciary Committee No. 2.

By Mr. Smith of Collin:

House bill No. 642, A bill to be entitled "An Act to amend Article 633, Chapter 7, of the Penal Code of the State of Texas, relating to rape." (The object of the bill is to raise the age of consent to 18 years.) Read first time, and referred to Judiciary Committee No. 2.

By Mr. Schluter:

House bill No. 643, A bill to be entitled CIV, Chapter 2, of the Revised Civil Statutes of Texas of 1895, relating to property subject to taxation and the mode of rendering the same." (The object of the bill is to provide for taxing judgments in this State held and owned by parties out of the State.) Read first time, and referred to Committee on Revenue and Taxation.

By Mr. Schluter (by request):

House bill No. 644, A bill to be entitled "An Act to provide for the transfer of suits to the proper county or precinct when a plea of privilege to be sued in a particular county or precinct is sustained, and to provide for taxing costs of transferring the case to the proper county or precinct against the plaintiff." Read first time, and referred to Judiciary Committee No. 1.

By Mr. Marsh:

House bill No. 645, A bill to be entitled "An Act to authorize the St. Louis Southwestern Railway Company of Texas to purchase, own and operate a railway extending from a point in or near the town of Tyler, in Smith county, to a point in or near the town of Lufkin, in Angelina county, with its franchises and appurtenances, known as the Tyler Southeastern Railway, and the owners thereof, to sell the same, and to authorize a corresponding increase in the authorized aggregate of the bonds and stock of the St. Louis Southwestern Railway Company of Texas, and to regulate reports of such properties, and the operations thereof." Read first time, and referred to Committee on Internal Improvements.

By Mr. Gill:

House bill No. 646, A bill to be entitled "An Act to amend Section 10, of Chapter 5, of the General Laws of Texas, passed at the first Called Session of the Twenty-fifth Legislature, relating to the fees of officers." (The bill amends the law so as to increase the maximum salary of constables from $1200 to $1500 per annum, and to reduce the maximum salary allowed district attorneys from $2500 to $2250 in counties having a population of 25,000.) Read first time, and referred to Committee on State Affairs.

By Mr. Smith of Collin:

Resolved, That Dr. A. C. Oliver, Representative from Cass county, be and he is hereby cordially invited to address this House on Saturday night, February 25, at 8 p.m., in the Hall of Representatives. Read second time and adopted.

By Mr. Dean:

Whereas, The Twenty-sixth Legislature has now been in session nearly forty days, and Whereas, In our judgment the crowded condition of the calendar demands, therefore be it Resolved by the Lower House of the Twenty-sixth Legislature, That from and after this date we hold at least two daily sessions except on Saturdays.
Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Judiciary Committee No. 2, to whom was referred
House bill No. 480, A bill to be entitled
"An Act to amend Article 379, of the Revised Penal Code, prescribing penalties
for gaming."

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

BAILEY, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Judiciary Committee No. 2, to whom was referred
House bill No. 410, A bill to be entitled
"An Act to amend Chapter 6a, Title XI.,
of the Penal Code, by adding the Article
411."

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

BAILEY, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Judiciary Committee No. 2, to whom was referred
House bill No. 424, A bill to be entitled
"An Act to amend Article 389, of the Penal Code, so that the same shall hereafter
read as follows:"

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

BAILEY, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Judiciary Committee No. 2, to whom was referred
House bill No. 428, A bill to be entitled
"An Act to amend Article 247, of the
Code of Criminal Procedure, so that the
same will hereafter read as follows:"

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

BAILEY, Chairman.

MAJORITY REPORT.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Judiciary Committee No. 2, to whom was referred
House bill No. 587, A bill to be entitled
"An Act to amend Article 388, of the Revised Penal Code of Texas, prescribing
penalties for gaming."

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

BAILEY, Chairman.

MINORITY REPORT.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: A minority of Judiciary Committee No. 2, to whom was referred
House bill No. 587, Do not concur with the majority, and
recommend that it do pass.

PALMER.
Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Judiciary Committee No. 2, to whom was referred
Senate bill No. 14, A bill to be entitled
"An Act to amend Subdivisions 1 and 2, Chapter 2, Title XV, Article 1093, of the Code of Criminal Procedure of the State of Texas, relating to attached witnesses, and providing fees for same,"

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

"Amend
By adding after the word 'attached' in line 18, Section 1, the words 'or subpoenaed.'
"By adding after the word 'court' in line 19, Section 1, the words 'or examining court.'
"By adding after the word 'attachment' in line 22, the words 'or subpoena.'
"By adding after the word 'court' in line 24, the words 'or examining court.'
"By striking out all of Senate amendments."

BAILEY, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Judiciary Committee No. 2, to whom was referred
House bill No. 425, A bill to be entitled
"An Act to amend Title V, Chapter 1, of the Penal Code, by adding thereto Article 292a."

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

BAILEY, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on State Affairs, to whom was referred
House bill No. 406, A bill to be entitled
"An Act declaring every person, firm or corporation operating a line of parlor or sleeping cars, to be a common carrier, requiring such person, firm or corporation to keep a general office in the State, and to furnish annual and other reports to the Railroad Commission of Texas; empowering the Railroad Commission to examine books, accounts and records of such persons, firm or corporation; to make rates, rules and regulations for the observance and guidance of same; prohibiting extortion; providing that such person, firm or corporation shall be subject to laws, rules and regulations governing railroads, so far as applicable, and providing penalties for violation of the provisions of this act."

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

BARRETT, Acting Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on State Affairs, to whom was referred
House bill No. 573, A bill to be entitled
"An Act to organize a Board of Pardon Advisers, and to define its powers and duties."

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

"Amend by substituting "$1200.00" in lieu of "$1800.00," wherever it occurs."

BARRETT, Acting Chairman.
A memorial of eighty-five citizens of Huntsville, Texas, praying for an appropriation for proposed erection of a monument over the grave of Sam Houston at Huntsville,

Have given the same due consideration, and I am instructed to return it to the calendar.

HENDERSON of Lamar, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Finance, to whom was referred

House bill No. 443, A bill to be entitled "An Act to provide for the payment of the bonds of the State of Texas that mature April 21, 1899, and to appropriate $2630 for that purpose, and to provide a sinking fund for the payment of the bonds of the State of Texas, held by private individuals that mature May 4, 1904, and April 21, 1909, and provide for the appropriation of $50,000 August 31, 1899, and $50,000 August 31, 1900, and provide for the investment of a sinking fund, and constitute a board for that purpose."

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

HENDERSON of Lamar, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Finance, to whom was referred

Senate bill No. 153, A bill to be entitled "An Act modifying the Governor to have underpinned, repaired and anchored, the admission and ward buildings of the Southwestern Insane Asylum, and making an appropriation therefor;"

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

HENDERSON of Lamar, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Finance, to whom was referred

Senate bill No. 105, A bill to be entitled "An Act to amend Articles 4786 and 4788, of Title XCVI, Chapter 7, of the Revised Civil Statutes of the State of Texas, relating to elections for road taxes."

Have had the same under consideration, and I am instructed to report it back to the House with the recommendation that it be returned to the calendar and referred to the Committee on Revenue and Taxation.

HENDERSON of Lamar, Chairman.

Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Finance, to whom was referred

Senate bill No. 137, A bill to be entitled "An Act to amend Article 5172, of the Revised Civil Statutes of the State of Texas, relating to commissions of tax collectors."

Have had the same under consideration, and I am instructed to report it back to the House with the recommendation that it be returned to the calendar and referred to Judiciary Committee No. 1.

HENDERSON of Lamar, Chairman.
tion that the accompanying report of a sub-committee be adopted.

HENDERSON of Lamar, Chairman.

To the Finance Committee of the House of Representatives.

The undersigned sub-committee, to whom was referred

The petition of the non-commissioned officers and privates of the First Regiment Texas Volunteers, First Division Seventh Army Corps, asking an appropriation and per diem allowance since the date of their enlistment, beg to report that they have had the same under consideration, earnestly hoping to find it within the powers of the Legislature to comply with the request. We regret to say that we find the following sections of the State Constitution insurmountable obstacles to the passage of a law of the character requested:

Article III, Section 44, provides:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant or public contractor, after such public service shall have been performed or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the treasury of the State, to any individual, on a claim real or pretended, when the same shall not have been provided for by pre-existing law; nor employ anyone in the name of the State unless authorized by pre-existing law."

Article 3, Section 51:

"The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporation whatsoever, etc.

Article 16, Section 6:

"No appropriation for private or individual purchases shall be made," etc.

All the people of this great State appreciate the noble and patriotic motives which have prompted the volunteers of Texas in taking up arms, in defense of the nation's honor; and their gallant deeds and splendid self-sacrifice has established them, for all time to come, in the hearts and affections of every citizen of the State.

We beg to communicate to them our sincere sympathy in the great hardships, which they have endured, and our earnest hope that the remainder of their service may carry them into pleasant places.

We regret that the sections of the Constitution of the State, above quoted, prevent us from responding to their request in a more substantial manner, but the fact remains that we are prohibited from doing what we would otherwise most cheerfully do.

That twelve copies be sent to the non-commissioned officers and privates of the First Texas.

Respectfully submitted,

BROWNE, BOLIN, WHELESS.

MAJORITY REPORT.

Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on Agricultural Affairs, to whom was referred House bill No. 599, A bill to be entitled "An Act authorizing the Commissioner of Agriculture, Insurance, Statistics and History, to appoint the necessary clerks, and to provide the means of collecting and publishing the agricultural, horticultural and stock statistics of the State."

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

WILLACY, Chairman.

MINORITY REPORT.

Committee Room, Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: The undersigned, a minority of your Committee on Agricultural Affairs, to whom was referred House bill No. 599, Do not concur with the report of the majority, and ask leave to recommend that it do pass, for the reason that agriculture is the most important of all the interests of the State.

The farmers pay a large per cent. of taxes to the State, and are by right entitled to a favorable consideration of this bill.

MURRAY.
od by which the percentages of essential ingredients, guaranteed in such fertilizers, shall be tested and proved, and to provide for the issuance of tags to be used in connection with the sale thereof; fixing a penalty for the violation of such requirements."

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

"Amend by striking out all of Section 16.

"Amend by striking out the words 'board of directors' or 'directors,' wherever they occur and insert in lieu thereof 'President of the Agricultural and Mechanical College.'"

"Amend in Section 7, line 3, by striking out everything after the word 'college' down to and including the word 'State,' in line 7."

WILLACY, Chairman.

Committee Room,
Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Agricultural Affairs, to whom was referred House bill No. 699, A bill to be entitled "An Act to require the owner, lessee or manager of any cotton gin or other gin or place where cotton is ginned and baled or baled, to number and mark each bale of cotton ginned and baled or baled, and to provide a penalty for failure to do so, and to provide that said number and mark shall be plainly written or printed on each bale of cotton with indelible ink or black paint, and to provide a penalty for failure to do so, and to prohibit the erasure, marking out or defacing of said number and marks, and to provide a penalty therefor, and to provide for the keeping of a book by the ginner, in which shall be entered the name of owner, the number of bale, the weight and the date, and to whom delivered, and to provide a penalty for failure to do so."

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

WILLACY, Chairman.

Committee Room,
Austin, Texas, Feb. 20, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Engrossed Bills, to whom was referred House bill No. 370, A bill to be entitled "An Act to diminish the civil and criminal jurisdiction of the County Court of San Saba county; to conform the jurisdiction of the district court thereto, and to repeal all laws in conflict herewith,"

Have carefully examined said bill and find the same correctly engrossed.

McANALLY, Acting Chairman.

Committee Room,
Austin, Texas, Feb. 22, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Engrossed Bills, to whom was referred Substitute House bill No. 43, A bill to be entitled "An Act making appropriations for deficiencies in the appropriation therefor made for the payment of expenses in support of the State government from March 1, 1897, to February 28, 1899, and for previous years, being claims registered in the Comptroller's office in accordance with the law, and for outstanding claims not registered, and for further deficiencies,"

Have carefully examined said bill and find the same correctly engrossed.

McANALLY, Acting Chairman.

Committee Room,
Austin, Texas, Feb. 21, 1899.

Hon. J. S. Sherrill, Speaker of the House of Representatives.

SIR: Your Committee on Engrossed Bills, to whom was referred House bill No. 398, A bill to be entitled "An Act to create a more efficient road system for Robertson county, 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 providing for the appointment of deputy road commissioners, and defining the powers and duties of such county commissioners, and providing for the appointment of road overseers and defining their duties, and for the working of county convicts upon the public roads of said county, and providing for officers' fees and rewards for the capture of escaped convicts, and to provide for the manner of training hedges along any public road, and to provide for the summoning of teams for road work and for an allowance of time of road service for same, and fixing a penalty for a violation of this act, and repeal all laws in conflict with this act."

Have carefully examined said bill and find the same correctly engrossed.

McANALLY, Acting Chairman.
Committee Room, Austin, Texas, Feb. 22, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred House bill No. 350, A bill to be entitled "An Act to require railway companies to receive and transport all freights coming to them from steamships, steamboats and other water craft and vessels without discrimination for or against any other steamship line, steamboat line, owner or company, or the owner or owners of any other water craft or vessels," have carefully examined said bill and find the same correctly engrossed.

MCAHALL, Acting Chairman.

Committee Room, Austin, Texas, Feb. 23, 1899.
Hon. J. S. Sherrill, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred Substitute House bill No. 54, A bill to be entitled "An Act to repeal Article 492, of Chapter 2, of Title XIII, of the Penal Code of the State of Texas, and to amend Article 491, of Chapter 2, Title XIIII, of the Penal Code of the State of Texas, and declaring an emergency," have carefully examined said bill, and find the same correctly engrossed, and I have this day, at 10:55 a.m., presented the same to the Governor.

COLLINS, Chairman.

The Chair then proceeded to put the motion to adjourn in order.
The motion of Mr. Phillips of Lampsas was lost.
The motion of Mr. Hurley prevailed, and the House accordingly, at 1:12 p.m., adjourned until 9:30 a.m., tomorrow.

APPENDIX.

By Mr. Kennedy:
Resolved, That the Honorable Chairman of the Committee on Claims and Accounts be requested to furnish the Journal Clerk with a copy of all the testimony given before said committee in reference to the "Hogg fee," and that the same be printed in the House Journal for the information of the members of the House.

Read second time, and adopted.

(House Journal, February 20, 1899.)

HOGG'S TESTIMONY.
The origin of this old claim is the secret treaty made in 1836 between Santa Anna and President Burnett, in which the Rio Grande was recognized as the boundary between Mexico and Texas. By the treaty of 1846, the Republic of Mexico ceded to the United States, among other things, the territory of New Mexico. Thereafter, Texas claimed, as was a fact, that New Mexico was north of the Rio Grande, and that by the treaty of 1836 that territory belonged to Texas. As the United States also claimed it, a controversy over it arose between the two governments. In 1856, to settle this and other controversies, the United States Congress passed a law, which was accepted by the Legislature of the State, giving Texas $10,000,000 in "stock" bearing 5 per cent. interest. The federal Government delivered $3,000,000 of this stock, but for apparent reasons, expressed in the act, retained the other $5,000,000 until the year 1855.

The State, when it was annexed to the Union, owed about $10,000,000. For the payment of its public debt and other purposes, it reserved to itself its public domain. For a while after the annexation the clamorous creditors were placated by the hope of getting their money from these lands. Failing to realize from this source, they contended that when the United States annexed Texas, they also assumed her debts. As a consequence, they sought to recover their claims from the United States, out of the New Mexico purchase. So that in 1855, to get rid of these contentions and other like embarrassments, the United States Congress passed a law agreeing to give Texas not only the $5,000,000 remaining, but also $2,750,000 additional; provided, that the creditors of Texas should be paid out of this sum. To this the Texas Legislature, by the passage of a law, promptly agreed.

Texas owed the debt, and the United States owed Texas. From time to time the period within which the claims against the State could be presented to the United States government was extended until 1861. Since that time no other law on the subject has been passed by the Federal or State government, except in 1873, when the Texas Legislature passed an act demanding the return to the State of the residue of this money.

With these laws, I was, while in office, more or less familiar, as well as with the history of the New Mexico claim. But I did not know, nor learn as a fact, that the United States owed any balance on this account to the State until 1897, when I took the matter up for investigation.
Later on in that year I wrote to the Secretary of the Treasury of the United States, and asked him what, if any, balance there was left on this claim account. He answered officially, stating the amount to be that which was subsequently collected, $101,113.27; and further stated that this fund had been turned into the general fund, so to speak. With these facts in hand, and a digest of the laws on the subject, I went to Governor Culberson, and told him of this old claim. He expressed to me then and there the opinion that it did not belong to Texas, and that it could not be recovered. He, however, took the matter under advisement and for investigation. Within a few weeks thereafter I called at the executive office and asked him what he had concluded about that New Mexico claim. He said he had looked into it, and had concluded, as he had at first believed, that there was nothing whatever in it for the State—in other words, that it could not be collected. I then asked him to send for the Attorney-General, and he did so. I then laid the matter fully, so far as my information extended, before both of them, and told them that the claim should be collected. In addition to this, I then and there offered to turn over to them, free of charge, all that I had done. I cannot repeat all the conversation had on that occasion, but I do recollect that Governor Culberson reiterated that there was not anything in the claim, and that the State could not collect it. It was then that I told him that I differed from him, and would undertake the collection for the State free of charge, upon the contingency of the payment of 10 per cent. of what I could get out of it. He remarked that he would give it, and that he considered it a good trade for the State. I thought it was so then, and I know now that it was.

Not long after that, in company with several other Texans, I went to the Chicago Beach hotel, where we spent the balance of the summer. While there I received the following letter from Governor Culberson:

"EXECUTIVE OFFICE,
"STATE OF TEXAS,
"Austin, July 31, 1897.

"Hon. J. S. Hogg, Beach Hotel, Chicago, III.

"DEAR SIR: I have talked with Judge Robertson about the matter of our conference the day you left, and while I entertain the same opinion I heretofore expressed, yet in view of your conviction on the subject, the paper has been signed in duplicate and one of them sent to your firm here. I sincerely trust that I may be mistaken, and that the money may be collected.

"Very truly yours,

"C. A. CULBERSON."

The "paper" alluded to in this letter is the contract, a copy of which he submitted to the Legislature in his special message on the subject, dated January 12, 1899.

On my return home in October, I again took up this claim for further attention, and rebriefed it. After going through with it thoroughly, my opinion was that the United States had occupied the position of a trustee to execute a trust for a specific purpose within a time limited. By the laws in force then, the claims of creditors were barred, so far as that fund was concerned, and the time for the performance of the trust had long before elapsed. The United States had no right, as a trustee, to this money, and the creditors, if there were any unpaid, were, in my opinion, barred as to the recovery of it, and the remainder appeared, without a doubt, to belong to the State of Texas.

After preparing the case I went to Washington, undecided as to what particular course I should take in its collection. I had it prepared so that I could submit it to the President, and get him, if possible, through a special message, to request its payment to the State, or to procure its allowance through the Appropriation Committee, or to bring action in the courts for its recovery. Soon after arriving in Washington, I started down to the capitol, and met Congressman Sayers in the rotunda. He was not only the member from this district, where I lived, but was also the only member of the Texas delegation on the Appropriation Committee. He was, therefore, in all respects the proper man to lay this claim before. I told him that I held such a claim against the United States, and he replied that in his opinion there was nothing in it. This seemed to be the view of everyone with whom I discussed the matter. In fact, I had never found anyone, except my law partner, who agreed with me that it could be collected. I asked Mr. Sayers to go with me to the Supreme Court Library and examine the authorities in the light of my brief on the subject. He did so, patiently and thoroughly. I laid my brief out before him, and took the laws and read them as I handed them to him according to the arrangement of my brief. After we had thus gone through with the investigation of the laws, he expressed to me his surprise, not only
that the claim was a good one, but also that the amount had not been long before collected. He promised to give the matter his personal attention, and did so. The only other man there to whom I spoke on the subject, directly or indirectiy, was Senator Chilton. I called his attention to it and told him I had left the brief with Mr. Sayers, and asked him to take care of the matter if it came to the Senate. He promised to do this, and fulfilled his promise. This was in the early part of December, 1857. Later on in the month of December Mr. Sayers addressed to me a letter at Austin, from which the following extract is taken:

"Upon investigation into the resolution of Congress, approved December 26, 1856, and which concluded with the clause, 'that so much of the joint resolution extending the time for the creditors of Texas to present their claims, approved August 18, 1856, as authorizes and requires the Secretary of the Treasury to distribute and pay the residue of $7,750,000 pro rata among those creditors who have filed their releases, be and the same is hereby repealed,' my attention has been called to the debate in the United States Senate, December 17, 1856, when that resolution was under consideration. During that debate, in which several Senators took part, Mr. Benjamin of Louisiana, used the following language:

"The act (Sec. 2, February 28, 1855,) states what proportion of the $7,750,000 is to be paid to Texas; and upon the familiar rule that the exclusion of one is the exclusion of another class, necessarily, Texas can receive out of this fund nothing more than by the act itself is appropriated to her. Now her interest in the fund is specially set forth in the second section of the act. What is she to receive? She is simply to receive reimbursement of any sums that she herself may have paid on account of the claims for which this fund of $7,750,000 was appropriated. That is to be reimbursed to her, and that is all that she is to receive under the act. I can not, therefore, under any possible hypothesis, imagine how Texas is to claim anything out of this fund in the treasury."

"The proposition is to leave in force that to be then distributed pro rata. That is to say, to present their claims; to which I have therefore, under any possible hypothesis, which requires the surplus, eventually ascertained, to remain in the treasury, to be then distributed pro rata. That is the part to which I object. I desire to know what the Senator expects to do with the resulting surplus?"

"Mr. Rusk of Texas, who had charge of the resolution, in the course of his reply, used the following language:

"The State of Texas has given to the United States the $5,000,000 which she had in your treasury, with the accrued interest and has surrendered her claims for Indian depredations in consideration of the United States undertaking to give her from $10,078,000 of her debt."

"And again Mr. Rusk said:

"'I think I can safely say that the State of Texas does not desire this money. She has given it for a release from a debt of $10,078,000.'"

"And again:

"'Texas expects to receive nothing from it; and as evidence that Texas expects to make nothing out of it, I may mention that she received $300,000 under the Act of 1855; and the joint resolution of last session is so worded that she will come in as a pro rata distributee under it. But she does not want the fund. She has received her share and released the United States from it. The language of the resolution would include the State of Texas side by side with the other creditors; but she does not want it.'"

"In the course of the debate, Senator Rusk stated substantially that the object of the closing paragraph of the Act of December 26, 1856, was to give other creditors ample opportunity within which to present their claims, and not permit those creditors whose claims had been presented to absorb the entire fund."

To this letter from Maj. Sayers I replied by an argument upon the proposition that the expressions used by the members of a deliberate body in the passage of a law would not be followed in the construction of the law by the courts; that at most they would only be considered for their value as argument, and when in conflict with the plain meaning of the law would amount to nothing, and that this rule applies as well to United States Senators as to members of the Legislature. My opinion was that by a fair construction of the law regardless of what those two able Senators thought, the State had a right to this unexpended balance.

After this I heard but little about the claim until I returned to Washington in the early part of May of last year. Mr. Sayers then told me that there would be but little or no trouble in the House on the subject. After I returned home I received the following telegram from him:

"Washington, May 23, 1898."

"Trouble in the Senate about claim. Please wire Senator Chilton immediately
and urge him to best attention possible.

Important.

(Signed) "J. D. SAYERS."

I complied with his request promptly. On the 30th he wired me as follows:


"Senate has returned deficiency bill to House with Texas item untouched. It is therefore absolutely safe.

(Signed) "J. D. SAYERS."

Later on we received the following letter from Governor Culberson on the subject, which explains itself:

"EXECUTIVE OFFICE, "STATE OF TEXAS, "Austin, July 25, 1898.

"Messrs. Hogg & Robertson, Austin, Texas.

"GENTLEMEN: I write to inform you that United States treasury warrant for $101,113.27, appropriated by the Act of Congress of June 7, 1898, payable to the State of Texas, has been received and delivered to the Comptroller, who will deposit it in the State treasury.

"Very truly yours,

(Signed) "C. A. CULBERSON."

When the money was paid into the State treasury the public press immediately gave an account of it, complimented Governor Culberson's administration on its collection, and stated that it had been done through the instrumentality of our firm, who had been employed by the Governor for that purpose.

I heard nothing more of this matter until last October, on my return from a trip to the Hawaiian islands. Then it was in politics, and I supposed that as it was the leading issue of the campaign, that the people had finally settled it by the election of Governor Sayers over Mr. Gibb; and if not in this way, then by the election of Governor Culberson to the United States Senate by a practically unanimous vote of the Legislature.

It will be noted that we collected only the principal due on this account. If the money had been withheld under similar circumstances from the State by an individual, we could have collected interest also, which by this time would have amounted to a very large sum. As no government will pay interest without its express agreement to do so, it rises higher than an individual, not by virtue of any rule of law or equity, but by reason of its sovereign power. As a rule no government can be sued without its consent, and suit against it must be brought within the limitations of the act giving the consent. By the original contract made between the United States and Texas, 5 per cent. interest on the sum due was to be paid. If the Legislature and the courts should hold that this per cent. became fixed upon the residue, the amount of the fund which has been collected, the United States would yet owe Texas on this claim a very large sum.

It is well settled that after a trust lapses and demand is made by the grantor for the money held by the trustee, and the money is not promptly paid, the amount begins at once to bear, as damages for the detention of the money, the legal rate of interest. This principle of law, which would be enforced in any court of law against an individual, would also be good against the United States government if that question should, by its consent, be left open for settlement in the courts. The $101,113.27, which the United States government has paid to Texas, with the so-called Toby claim added, would not be equal to the just amount, principal and interest, which was due from her to this State. Certainly, when the Legislature in 1873 made the demand through an express resolution, especially after the trust had lapsed and the claims had been barred for over ten years, it was all that the State could do under the circumstances. Why the United States should not, therefore, be required to pay the interest on the amount so withheld from the State is a matter that the members of the Legislature will, of course, be able to explain to their constituents when they return any of this money to the Federal treasury. Our contention is that if the Federal government would set the high example of obeying the law which she enforces against individuals she should pay into the State treasury a much larger amount than the sum we collected added to the so-called Toby claim.

I am very much obliged for the courtesy of the committee, and am open to such questions as may be asked concerning this or any other of my professional or business transactions, made since I retired from public office. I am, to some extent, public property, so to speak, and shall not avoid any investigation into my professional or business transactions.

While in office I did not know that the United States owed Texas anything on this account. I was busy with many other matters, as the people all know. It was several years after my retirement to private life that I discovered the facts on which I made out this claim against the Federal government. The money is now in the treasury, and 10 per cent. of it belongs to my firm.
M. M. Crane, after being duly sworn, testified as follows (question by Mr. Childs):

We have a bill here and two or three resolutions relating to what is known as the Hogg fee; will you please tell the committees all you know in reference to the Hogg fee—what is known as the Hogg fee? Just make a statement in regard to it.

Answer. As to the contract, I do not think I know anything. I have never seen the contract at all; there is nothing about that to which I can testify of my own knowledge. I was notified some time in the summer of 1897, I believe (I would not be able to give the date, but I think it was in the latter part of June or early part of July, but about the date I would not be positive) by Governor Culberson that Governor Hogg claimed to have discovered some indebtedness due Texas, and about the effect of it was—I could not repeat the language—he wanted me to consider the question as to whether or not Texas could maintain a suit to recover the money. I ascertained—whether in that conversation or a subsequent one—that the money was the result of the sale of territory and settlement of the northern boundaries of Texas in the early fifties for which Texas received, or at least the promise, in round numbers of ten million dollars, and as a result of the negotiations, the Federal government was to retain seven and one-half million dollars of the money for the purpose of settling indebtedness of the Texas republic. And he claimed that all of that money thus retained had not been used for the payment of the debt, and Texas could recover the remainder of it. I met him and ex-Governor Hogg subsequently—a few days after that, perhaps—and the question was again presented by him and Governor Hogg, after some preliminary statements, not necessary here, perhaps, to mention. I was fairly familiar with all legislation on the subject, as was Governor Culberson. I presume, because it was all involved in the settlement of the Greer county case. If you gentlemen will examine the decision of the Supreme Court of the United States in the Greer county case, I think you will find that the court based its decision on the settlement of the northern boundary of Texas. I reached the conclusion in which Governor Culberson concurred, that no suit could be successfully maintained in the case in the District of Columbia to recover that money; and so stated to them. That was the only phase of the question that we discussed. It was the only idea in my mind, it was the only one suggested to me, as to whether or not suit could be successfully maintained by Texas in the Court of Claims in the District of Columbia. I did not consider any other question, and it was not suggested to me that they desired to employ anybody to assist in getting an appropriation from Congress. I never thought of it, and if, indeed, it had been suggested to me, I would not have considered the legal questions at all, for I happened to see Congress in session when an appropriation was made over the protest of Major Sayers without any claim that the appropriation was lawful. That was the sugar bounty. I never knew of any contract in 1897, until probably December of that year. I saw by the newspaper that Governor Hogg was in Washington, and had met Governor Sayers there, and that Governor Sayers had introduced a bill to get an appropriation for this money. I met Governor Culberson again after that, and he said they had made a contract, that is all I know of the contract, or of the negotiations leading up to it. Now, after the appropriation had been obtained, I saw it stated in the newspaper that the firm of Hogg & Robertson had been employed, after consultation with the Attorney-General (which meant myself), and it of course bore the construction that I had consented to the employment of counsel in the capacity in which the services was rendered; that is, to go to Washington to obtain the appropriation. I told Governor Culberson that it was unjust to me, because I had not understood that that question was being considered, and could not have been said to consent to anything I did not understand to be under consideration. If the contract is all right it will stand on its own merits, if not, let the parties who made it become responsible for it.

By Smith:

After you investigated the legal phases of the proposition, as to the advisability of bringing suit in a court of claims, you reached the conclusion that such a suit could not be maintained, was there ever after that any conference between yourself and the Governor and ex-Governor Hogg and Judge Robertson on that subject?

A. No, sir, not with all of these gentlemen together.

Q. Did you make a written report of your opinion to the Governor?

A. I did not, because a conference occurred in Governor Culberson's room, and they sent for me, and I went there. I am pretty sure that this was the first
and only conversation I ever had with those two gentlemen on this subject while together.

Q. Was it your opinion that the suit could not be maintained?
A. Yes, sir, and I am still of that opinion.

Q. Were you simply giving your opinion as a proposition of law?
A. That was all. That was all I understood to be inquired about.

Q. Did Governor Culberson express an opinion about maintaining a law suit at that time?
A. He did.

Q. Did Governor Hogg entertain a different opinion?
A. I would not say about that, but Governor Culberson and I both agreed. Governor Culberson may have considered some reasons that I did not; I do not know whether Governor Hogg expressed an opinion or not. He impressed me as being of contrary opinion; I am not now just clear as to what he said.

Question by Henderson:

Q. (By Crane.) You do not want me to swear to the law, do you?
A. (By Henderson.) No, sir, I would not be so presumptuous.

Q. As Attorney-General, who would you have regarded as the proper person with whom to make a contract of that character?
A. Now, Colonel, as Attorney-General, the truth is, I could not find a man that I thought was the proper party. I believe we have thirteen members in Congress, and two United States Senators, at an annual salary of seventy-five thousand dollars per year, and all perquisites attached. While Texas is not paying their expenses directly, it does indirectly.

Q. (By Henderson.) Have we a general welfare clause in our Constitution?
A. I don't think there is a general welfare clause in the Constitution in those terms.

Q. Is there any authority in the Constitution for any one to make such a contract, that is what I am asking you?
A. I do not know about that. I would not like to pass upon that without giving it due consideration. I have never heard of but one similar employment being made, and that was by Governor Ireland.

(By Henderson.) That was when we were in the Legislature together and voted against it?
A. (By Crane.) I do not remember how I voted; that was to get somebody to get up evidence that was in the department at Washington, and I suppose that was a pretty tedious task. As to whether or not there is any authority to make a contract under the Constitution and statutes—just off-hand—I would not like to decide this question. I do not believe the Texas Constitution ever contemplated the employment of lobbyists; I don't believe it did, because I do not believe such a course would ever be necessary. My attention might be called to some particular clause that would give such authority, but I don't think it ever entered the mind of the Constitution makers that it would be necessary to do a thing of that sort. There was one suggestion made in Governor Culberson's special message that, I think, was inaccurate. His statement was, that none of us knew anything about this claim. I did understand fairly well the statutes upon which this claim was based, and he said he was informed subsequently that the Comptroller and Treasurer knew nothing about it, but Honorable W. B. Wortham, the Treasurer, told me he knew all about it; but he can make a statement for himself. I understand that it was known to Governor Lubbock, former Treasurer. Personally, I did not know the state of the account.

Q. (By Smith.) I understand that you understood that there was a balance due the State?
A. I never looked into the question as to whether it was a balance or not, but Mr. Wortham told me, and I understood from his statement to me that he knew all about it, and could have given approximately all that Texas was entitled to. I talked to him a little while ago, and if you gentlemen want to see him about that proposition you can send for him. While I don't think he is anxious to appear before you, I am sure he would not disobey the process of the committee. Governor Lubbock knew all about it, and Judge Reagan must have known all about it, because I understand he introduced a bill to have it paid to the State Treasury a long time ago.

Q. (By ______.) I would like to ask you, General Crane, in regard to a brief having been submitted to you that was prepared by Governor Hogg.
A. No brief was submitted to me.

Q. No brief was tendered to you or Governor Culberson?

A. None was tendered to me—none in conference or at any other time that I have any recollection of. If anybody ever called my attention to any statute or decisions, I have no recollection of it. I know no form of brief was ever tendered to me. I am sure Governor Hogg never tendered me any citations at all,
and I don't think anybody else did. The only point that was submitted to me was whether or not a suit could be maintained, and as I stated to Governor Culberson, it was an injustice to me, as I had never consented to the employment of Governor Hogg, or any one else, for the purpose of going to Washington and getting the Congressmen in line, and the only question that was submitted to me was whether or not that suit could be maintained in the court of claims, and whether Governor Hogg should assist us or not.

Q. (By Grogan.) Upon what did you base your decision that it could not be collected in the court of claims?
A. I based it upon this fact, that as I understand the negotiations originally without being able to state them correctly (perhaps Governor Sayers has them fresh in his memory), were that Texas was to receive so much money for that territory ceded to the United States upon the settlement of the present northern boundary of Texas. It was agreed that Texas should be paid only a part of the money, I do not remember the amount now, perhaps five million, and the Federal government retained seven and one-half millions of it, for the purpose of paying Texas debts. I do not know it, and as I understand it, the Revised Statutes constitute the contract. Nothing is said in them about paying any balance to Texas. There being no agreement to pay this money to Texas, I did not believe a court of claims would compel it to be paid. I recognize that Congress could transfer the money here, but that phase of it was never presented to me.

Q. (By Childs.) Did you decline to bring suit for the claim, or did you give it as an opinion that it could not be recovered in the court?
A. No, I did not decline to bring the suit, because we never reached the point of bringing suit. I gave as my opinion that I did not think that we could maintain the suit.

Q. If your department would have undertaken to bring the suit, would your department have been in such condition that you could have brought it?
A. That involves a matter of opinion. Understand me, that if in any litigation the Governor wants to employ anybody, I have never complained. While we were always crowded with work, we found time to attend to all business that was brought before us; for instance, at the request of the Governor, I requested Judge Hill, of the Attorney-General's office, to go to Montague county to prosecute a poisoning case. That would not come regularly under our department, but I did it so as to save the State from paying a large fee to employ counsel. And then again, Judge Hill went over to some county close to Bryan, it may have been Bryan, I do not recollect, to attend to a contested will case, in which the Confederate Home was involved. That trial was not strictly in the line of our department. Subsequently the Legislature put on us the duty of attending the suit involving the San Jacinto battle grounds. Mr. Fuller spent two or three weeks in looking after that matter. I would not have complained, and have no complaint to make now of the Governor employing outside counsel, but we could possibly have attended to the case, but would not have objected to employment of counsel to help litigate the case.

Q. You could possibly have attended to it without neglecting the business of the office?
A. Yes, sir, I think so; but I think it perfectly proper for the Governor to employ counsel to help the Attorney-General in litigation cases. I made no criticism of that.

Q. Is it true that your department has been crowded ever since you went into office?
A. Yes, sir, we had a good deal to do.

Q. Did you not employ private counsel a good deal?
A. I do not think, with the exception of the prize fight case, in which Governor Culberson employed ex-Governor Hogg, you will find any fee was paid except to take some testimony in the Gibson land case. I got the Governor to employ William Fort Smith in southern Texas to take some testimony, and Judge L. D. Brooks was also employed to gather testimony in the same case. I do not think you will find anybody else was employed during the four years I was in office. I will state, however, that the bar courteously postponed the cases pending until we could familiarize ourselves with them. We would have been compelled to have help, but the bar was so kind in not urging the litigation on hand at the time when we came into office. Most of it was such as could have been tried at one time as well as another, at least there was no particular reason for forcing speedy trials.

COMMITTEE ON CLAIMS AND ACCOUNTS.

Governor Joseph D. Sayers, having been invited by the committee to do so, testified as follows.

Question. Will you please tell the committee what you know about the case.
Answer. In accordance with your request, Mr. Chairman, and gentlemen of the committee, I will state what I know in reference to the collection of the claim of $101,000, in round numbers, that was in the treasury of the United States, and held there in trust for the benefit of the creditors of the Republic of Texas.

In December a year ago, Governor Hogg came to Washington and had a conversation with me in respect to the collection of this claim. Previous to that time I had known that some such sum of money was in the treasury, but inasmuch as no Governor of Texas had requested or authorized me to inquire into the matter and to take steps for the collection of the fund, I had made no effort to do so. Governor Hogg is quite right in his statement as to what I said to him in our first interview, that is, that I did not believe Texas had a just claim against such fund, that it belonged to the creditors of the Republic of Texas, and I believe so still, to the extent of outstanding liabilities, if there be any such. As I have already stated, I had given the matter no attention. Governor Hogg handed me a brief upon the subject, and this is the brief.

This brief was used by the Committee on Appropriations of the House of Representatives, and also by the like committee of the Senate, in the consideration of the claim. Governor Hogg also handed me a letter he had received from the Secretary of the Treasury staking the balance due. It will leave with you the brief and letter handed me by Governor Hogg. On the next morning, or probably the same day, he and I went to the Supreme Court library and examined the statutes upon the subject, both Federal and State. He said he had authority from the Governor to collect the fund, and asked me if I would attend to it in Congress. After the examination which was had in the library by Governor Hogg and myself, I came to the conclusion that the balance, if any, of the fund that would remain due after the payment of all the claims would by right belong to the State of Texas, and in a few days thereafter I introduced a bill to transfer the fund to Texas, coupled with a condition that Texas would hold the United States harmless from the payment of any claim that might be presented against said fund. The bill which I introduced was substantially a copy of the resolution passed by the Twelfth Legislature of Texas upon the subject. It was contrary to the rules of the House of Representatives to refer this bill to the Committee on Appropriations. Under the rules, it should have gone to the Committee on Claims, but to have sent it to that committee would have insured a failure of its passage for the reason that the calendar was so largely over-crowded as to prevent a consideration of the matter during the present Congress. After the bill reached the Committee on Appropriations, two objections were presented to its consideration by that committee—one being that the committee, under the rules of the House, had no jurisdiction of the subject matter: the other being that it would require legislation before an appropriation could be made. The chairman of the committee as an act of courtesy to me agreed to waive both objections and allow me to take my chances in the House to pass it. He and I addressed a communication to the Secretary of the Treasury, inquiring of him as to the nature of the claim, the legislation that had been enacted respecting it, and the balance, if any, that was still on hand. We received a reply in a few days substantially to the same effect he had written Governor Hogg before. The bill was then referred to a sub-committee of the general committee, and was reported favorably. The general committee passed it and incorporated it in the general deficiency bill, which was afterwards reported to the House. If a single objection had been offered, the item would have been rejected without any vote in the House. When it was reached, in the consideration of the bill, Governor Dingy, who was the leader of the House, came over to my side and asked me if the claim was all right. Relying upon the letters that the Secretary of the Treasury had written to Governor Hogg and also to Mr. Cannon and myself, I told him it was. The item then passed the House unquestioned. When the deficiency bill reached the Senate, I went Governor Hogg's office and the letter which he had received from the Secretary of the Treasury to Senator Chilton, and asked him to take charge of the matter. I appeared before the sub-committee of the Senate Committee on Appropriations in behalf of the claim, and also wired Governor Hogg requesting that he should telegraph Senator Chilton in order that there might be no doubt as to the passage of the claim.

It is due Governor Hogg that I should state that subsequently, either in May or June (I forget which month) of last year, he visited Washington again and conferred with me in regard to the matter. I have stated substantially my connection with the matter.

Before, however, concluding, I desire
the privilege of saying a few words as to this claim, because of my incidental connection with it as before stated. It grows principally out of the interest of the State of Texas in what is known as the Territory of New Mexico. The United States and Texas reached an agreement by which the former agreed to pay the latter ten millions of dollars, five millions of which was to be paid in cash to the State and the remainder was to be converted into stocks, bearing, I think, five per cent. interest per annum. This was done. Afterwards, at the instance of the Senators and Representatives from Texas—Senator Rusk taking the prominent part—Congress passed an act converting the bonds into cash, and at the same time increasing the amount so that the sum total of money held to pay the creditors of the Republic of Texas amounted to $7,500,000. This increase of two millions and a half dollars resulted from the premiums which the stock commanded, and also from the allowance by the United States of a certain sum of money to compensate the State for the expenditures made by her in defense of her frontier against Indian depredations after she had been admitted into the Union, and also as a recompense for certain properties transferred by the State to the United States upon her admission into the Union.

The act of Congress that increased the fund from five millions dollars of stocks to seven millions, five hundred thousand dollars cash, also provided the method of its distribution. The indebtedness of the Republic of Texas was, as well as I can recollect, under the act divided into three classes, each class being treated somewhat differently. One portion of the indebtedness had been secured by the Republic of Texas by mortgage upon all import duties. This mortgage, of course, became valueless upon the admission of Texas into the Union, the import duties no longer going into the treasury of the State, but into that of the Federal government. The United States, therefore, became responsible in some measure for the indebtedness of the Republic, at least to the extent of that portion which had been secured by mortgage upon import duties. It was also provided in the same act that the indebtedness should be scaled and that no claim should be paid by the United States unless it had been previously recognized by Texas. A certain time was fixed within which all claims were to be presented and disposed of. Subsequently acts of Congress were passed extending those dates.

It is proper to say here that in all of these measures Senator Rusk took the leading part. In fact, so far as the records of the Congressional debate show, neither his colleague in the Senate nor any Representative from the State had anything to do or say in the matter.

I should also state that is was provided in the law that every creditor before receiving payment was required to execute a full and complete release of his claim against the Republic of Texas. On one occasion a debate arose in the Senate, Mr. Benjamin of Louisiana, and other Senators taking part. Mr. Benjamin desired to know of Senator Rusk what would be done with the residue of the fund, should there be a balance after the satisfaction of all the claims, as provided for in the legislative agreement. Senator Rusk, if I recollect aright, on one occasion, stated substantially that Texas had no interest in the fund other than to see that it was properly disposed of, but at another time, when the question was pressed upon him, he evaded it by saying that he never sold the skin of a bear until after it had been killed.

It was not until after I had introduced the bill for the payment of the residue, at the instance of Governor Hogg, that I inquired into the nature and history of this fund, and what I have stated is the result of the examination made after the bill had been introduced by me. I am still of the opinion that if there should be any claims against this fund that have not been considered and settled, it would be the duty of the State to pay them in the manner as other claims of like character have been paid. There are still outstanding claims against that fund of the existence of which I did not learn until after the passage of the bill by Congress. Should the Legislature recognize these claims, it ought to satisfy itself as to their authenticity and should not allow any interest upon them, nor should they be paid beyond the pro rata established for similar kinds of indebtedness.

As to the Toby claim, amounting to $45,000, about which so much has been written, I desire to say that I knew nothing of its payment until some weeks after the adjournment of Congress and until after the money had been paid into the treasury of the State. Upon my return to Washington last November, I inquired most carefully into this claim, and also into another claim which I learned had been paid, and which amounted to about $125,000. There can be no question whatever that these two claims were paid by the United States government, and that the former—the Toby claim—was paid at the request and
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under the sanction of the Legislature of Texas. I hold in my hands a volume of the statutes which contains the resolution of the Legislature requesting its payment out of the funds held by the treasury of the United States for the satisfaction of the indebtedness of the Republic of Texas. Upon inquiry at the Treasury Department, I learned that in giving to Governor Hogg, and also to Mr. Cannon and myself, a statement of the balance of the fund in the treasury, both of these claims were omitted, and that the amount refunded to Texas was too great by the sum total of these two amounts, that is, $45,000 and $125. As to the correctness of this statement, there can be no sort of doubt; and it is equally as true that the Treasury Department failed to charge upon its books these two items against their fund. The Treasury Department failed to charge upon its books these two items against their fund. The duty of the Secretary of the Treasury to hold it. Besides, it is believed that there are still outstanding and unpaid claims against the State. A gentleman from Walker county sent me notes of the Republic of Texas, amounting to $500, besides interest at the rate of ten per cent. per annum from their date. There is also a similar claim at Temple, Texas, another in Jackson county, and another in Aransas county. There may be other evidences of indebtedness to the Republic of Texas besides those mentioned.

I have already suggested as to what should be done, provided the Legislature should undertake to pay these claims.

Question by Smith: A day or two ago I noticed in the papers that several years ago—I think since you have been in Congress—Judge Culberson had a claim of $1000 allowed.

A. I do not know anything about that matter, as it was not before my committee. The two claims heretofore referred to by me, amounting to $45,125, in round numbers, were paid before I was elected to Congress.

Question by Grogan: Do you think Texas should be responsible for these claims?

A. If you will examine the item in the General Deficiency Bill making appropriation of $101,000, you will find in it a provision that Texas will protect the United States government against the payment of other claims against this fund. The resolution passed by the Twelfth Legislature guaranteeing the government of the United States against the payment of such claims as may be presented, and providing that the balance in the treasury should be paid to Texas, was practically incorporated into the appropriation.
It any debate in the House upon it.

ject in the

may be

that I might more thoroughly acquaint

the court would have entertained it.

ter a full investigation?

myself with its history, I carefully read

Resolution was read by

Governor of Texas, or from the Attorney­

Congress and of the Legislature. You

amount appropriated by

requested by any governor to do so. Gov­

Washington?

Ruch

A. Certainly. I would have gone to

work and investigated it fully.

A. I didn't see the authority

myself. Governor Hogg didn't men­

tion anything to me about the letter.

A. I had introduced the bill and it

had been referred to the committee, but

the General Deficiency Bill, in which it

was finally placed, had not been reported

to the House at that time.

Q. The first conversation you had was

in December, was it not?

A. Yes. Nothing up to that time had

been done. I introduced the bill, I think,

in January; probably the latter part of

December.

Q. He was there in December the first
time?

A. Yes.

Q. He was back again in June?

A. Yes—the latter part of May or

June.

Q. What was the status of the bill on

his second visit to Washington?

A. It had not passed the House.

Q. With relation to the time of the

telegram?

A. The telegram which I sent to Gov­

ernor Hogg was after the General Defi­

ciency bill had passed the House and

gone to the Senate.

Q. Did he come in response to your

telegram?

A. He did not. I saw Senator Chilton

in a day or two after I had sent the tele­

gram. He asked me if I had been tele­

graphing to Governor Hogg, and I told

him yes.

Preliminary statement of Judge John

H. Reagan, before the Committee on

Claims and Accounts.

Q. Gentlemen of the committee, at the

request of the committee, I have invited

Judge Reagan to tell us what, if any­

thing, he knows in regard to the Toby

claim, and what is known as the Hogg

fee.

A. I cannot give you very much in­

formation, but I will make a prelimi­

nary statement of how this claim originated.

Question by Smith: One question I

wanted to you to answer in reference to

this matter, is whether or not, while

you were a member of Congress, you

made any effort in reference to the col­

lection of this claim?

A. I will state that directly. In 1836

Congress passed an act defining the

boundaries of Texas. The eastern bound­

ary, as described by the Act of Congress

in 1836, commenced at the mouth of the
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Sabine river and ran up the river to thirty-two degrees of north latitude to Red river; thence up Red river to the 100th parallel west longitude, and thence to the Arkansas river, and up the Arkansas river to its source. The western boundary began at the mouth of the Rio Grande; thence up that river to its source, and thence north to the forty-second degree of north latitude. So you see we were pretty far up north once; that embraced Santa Fe and a part of New Mexico east of the Rio Grande river.

The annexation and Mexican war intervened, and the title of Texas was annexed to the United States with that boundary and her title vindicated. Later in 1850, under what was called the compromise act, Texas agreed to cede to the United States all that part of her territory lying west of the 103rd parallel of west longitude and north latitude, which covered the territory between 103rd parallel to the Rio Grande river, and covered the territory north of the Panhandle to the 100 degrees of latitude; then it extended over the territory all of the way as far as it went, to the forty-second degree of north latitude. The United States agreed to pay for that territory ten million dollars. Subsequently $2,500,000 was added to this, probably in consideration of the expense the State had been put to in the protection of the frontier. The first agreement was that $5,000,000 out of the $10,000,000 was to remain in the hands of the Federal government in trust for the payment of the indebtedness of Texas. Afterwards, two and a half million was added to this to pay the creditors of Texas.

After being duly sworn, Judge Reagan testified as follows:

A good while ago, I am not able to state the precise date, it may have been twenty years ago, it came to my knowledge that there was in the United States treasury one hundred and three thousand dollars to the credit of Texas, which was during Mr. Hays' administration, and John Sherman was Secretary of the Treasury. I went to him and inquired of him about it, with a view to get the money paid over to the State, and he said it could not be done, without an act of Congress. I then introduced a joint resolution or act, probably a joint resolution, because matters of this character are usually controlled by joint resolution, directing the money to be paid over to Texas. I made up a brief, containing a statement of all acts, resolutions and notices that had been adopted on that subject by Congress and matters that came from the departments. It appeared at first that they had fixed a date at which all claims against that fund were to be brought in. That time expired and another date, and I think a third one and perhaps more dates were adopted from time to time to enable creditors to come in with their claims, and at that time it was supposed that there were no additional claims to be paid. The Toby claim came in afterwards; it came in because the Legislature of the State of Texas had recognized that Toby was entitled to that much. I got that bill, or resolution, whatever it was, to a judiciary committee of the two Houses, and I handed the brief to Mr. Butler of Massachusetts, and asked him to look into it. A few days later he told me he had examined the brief and the authorities, and he would aid me in getting this money turned over to the State of Texas. He said the money belonged to Texas, and he would help me. I do not remember definitely the subsequent action on the matter; I only know it never resulted in getting the money turned over.

I see there is a question about whether this money ought to belong to Texas or to the United States. My opinion was that it belonged to Texas.

Question by Smith of Grayson: What became of the measures introduced by you in Congress?

A. I do not think I can tell you; I think it was reported favorably, but I do not know what was done with it; whether it was reached on the calendar or not; I think it was reported favorably, because General Butler, I think, reported it favorably, as he was friendly to the measure. After that I had no further connection with it, and it had almost passed out of my mind.

Q. Were you a member of the House or Senate at that time?

A. I was then a member of the House of Representatives. I know nothing of the subsequent transactions, except as published in the newspapers last summer and since.

Q. That was about twelve years ago, was it not?

A. I think it was more than twelve years ago; it was in Hays' administration that it occurred. About the immediate transactions I have no knowledge; I knew of no arrangement made to have it collected: the first I saw of it was in the newspapers last summer.

Question by Smith of Grayson: What I want to know is, why it was not collected at the time you made the effort?

A. At that time a great deal of sectional prejudice prevailed, and we had to encounter that, and while I do not have a distinct remembrance as to that par-
ticular fund, the same feeling prevailed to matters always, in reference to the Greer county case. If I were at home in my library I could tell you the date.

Question by Childs: You think the cause of it not being collected was due to the prejudice against the South at that time?

A. I think it was probably the cause, because the Secretary of the Treasury never raised any objection at all; he said he did not have the authority to turn it over; he recognized it belonged to Texas, and the committee recognized that it belonged to Texas.

Q. Were you elected Senator subsequent to that?

A. Not immediately; it was sometime afterwards that I went to the Senate. I do not remember of making any further effort to collect this claim.

W. B. Wortham after being duly sworn testified as follows:

Question by Childs: We want to know what you know about the Hogg fee? the money he collected; how it originated; from whence it came and what right the State had to it?

A. Well, I was appointed bookkeeper in the State Treasury Department in 1874, under Major Dorn, at the same time Governor Coke came in as Governor. So far as the contract concerning the collection of this amount in the United States treasury (I mean contract) I do not know anything more about it than any other reader of the newspapers. As to the balance in the United States treasury, I know as to its existence since 1874. I know that Col. Darden, who was then Comptroller in the latter part of 1874, called Governor Coke’s attention to the fact that this money had never been collected in accordance with law or joint resolution, or some action on the part of the Thirteenth Legislature, requiring that the Comptroller and the Governor, I believe, should collect it. (I want to say that I am not a candidate for office, but want to get this in straight.) As I said, I was appointed bookkeeper in the office of the Treasurer, and when the Toby claim came up, for adjustment of the payment of it, Simeon Toby was here representing the Toby heirs in the payment of their claim. In the adjustment of that Toby claim, which was to be paid out of this balance, as the Legislature finally determined, the balance in Washington, of course, came up. Governor Roberts was at that time Governor, according to my recollection, and it was well known to him that the United States was due Texas something over one hundred thousand dollars on this old sale of land, as we used to call the sale of New Mexico or the Santa Fe claim, or something of that sort. The Legislature finally approved the Toby claim under the conditions that it was to be paid out of this balance at Washington. The Toby claim amounted to forty-five thousand dollars. In the adjustment of the Toby claim the Comptroller and Treasurer, Major Dorn, were appointed a committee to ascertain as to what, as well as I remember, the Toby people were entitled to. Of course, being bookkeeper in the Treasurer’s office, and Mr. Toby being around the office, I was very familiar with him. They reported the amount due Toby something in excess of the amount of forty-five thousand dollars, which was finally paid them, as well as I remember. I had occasion to look these matters up frequently, and I knew at the time that the Toby claim was audited or approved that the United States government owed us something over or about one hundred thousand dollars, and I took occasion to refer back to the records to see whether the records or myself were right. In the Toby claim we were informed was paid by the United States government forty-five thousand dollars in 1881 or 1882, somewhere along there. From that time on after the payment of the Toby claim, the matter was never agitated, so far as I know, until the collection of this balance by Governor Hogg.

The matter went on, as I say, I knew nothing more about it until I was Treasurer of Texas, when Governor Culberson turned over to me a warrant on the United States treasury for one hundred and one thousand dollars and some cents. There was a question raised in the Treasury Department by my chief clerk, as soon as I got that check, that Texas had swindled the United States government out of forty-five thousand dollars, and when my attention was called to it, I declined to entertain it, saying that I was not the keeper of the accounts of the Treasurer at Washington; later on we seemed to have gotten a little too much money. I collected the one hundred and one thousand dollars, Mr. Lawrence, my chief clerk in the Treasury Department, called my attention to the fact that the Toby claim had been paid, and we had collected too much money, and insisted that the matter ought to be corrected. I would not take it up, because I was not collecting money for the United States government; I was acting for Texas in my official capacity, and I proceeded to collect the one hundred and one thousand dollars.
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Question by Smith: Do you know of any other claims being paid out of that fund except the Toby claim, since the Toby claim was paid?
A. No sir, I have never known of any; the Toby claim is the last claim I have ever known of being paid out of that fund.
Q. Who was Governor Sayers' predecessor in this district?
A. I do not know; it may have been Mr. Hancock.
Q. Do you know anything about him collecting anything shortly before the Toby claim was collected?
A. Nothing that I know of.
Q. Did not Governor Culberson's father, Col. Dave Culberson, collect a claim out of that fund?
A. Not that I know of.
Q. How did your chief clerk find out that there was so much owing to Texas?
A. By going back over the Journals, I suppose.
Q. Was it a matter of current knowledge in your office that there was a sum due the State of Texas by the United States?
A. Yes sir; we had been knowing that the United States owed us this balance for years.
Q. Did you make any effort to collect this claim yourself?
A. No sir.
Q. Did you ever call it to the attention of anybody, whom you thought had a right to collect it?
A. No sir, I never did.
Q. Did you ever make any effort to collect it?
A. No sir, I never made any effort myself.

Question by Henderson: Is there any record testimony of account of the United States and Texas in the Treasurer's office?
A. There is no account kept there at all, except by correspondence; the account was kept in Washington; the whole matter of it was transferred there when the United States government assumed the payment of those claims, and a certain amount of money deposited in the United States treasury to protect her against all the debts of Texas.
Q. Has the United States treasury ever made any demand on you for the restitution of this forty-five thousand dollars?
A. No sir.

Question by McClellan: Mr. Wortham, while you were bookkeeper in the Treasurer's Department, or Treasurer, did Governor Hogg ever have occasion to ask you for any data concerning this claim while he was Attorney-General?
A. No sir.
Q. While he was Governor, did he ever make any investigation of it?
A. Not that I have any recollection of whatever.

Question by Smith: This auditing department claim you speak of, had nothing to do with it, did they, Mr. Wortham?
A. They have nothing to do with it, so far as I have been able to ascertain.
Q. You all kept no check on them at all?
A. No sir, we had no check on them, so far as I could ascertain; the only way we could ever know what was due us was to ascertain from the United States government.

Question by Prince: You say the only way you had of finding out what was due was to ascertain from the United States government?
A. I knew it; I could find out by the Journals; I found it out from Governor Roberts in 1881, what was due then.
Q. Did you ever make any effort, as the Federal government?
A. A. No, sir,
Q. Did you ever call it to the attention of any of the Congressmen concerning any of these claims, you were written to about?
A. No sir; I have written to the constituents of Congressmen, though, that the money was there to protect the debts of the Republic of Texas.

Question by Smith: Had it not been understood for twenty-five years that this money was there, and that is was to protect the debts of the Republic of Texas?
A. I do not propose to speak for anything except the Treasury Department; so far as the Treasury Department is concerned, it knew it for twenty-five years, but as to the number of claims or the amount of the claims, I did not know. I wrote a gentleman a few weeks before I went out of the Treasury Department concerning one of these claims, and I think Mr. Robbins is in correspondence with him now about it.
Q. During the last twenty-five years, have not people written to you that they or their father or grandparents had valid claims against the Republic of Texas that had not been settled?
A. Yes sir.
Q. You did not know anything about the validity of these claims?
A. I was not able to pass upon them at all.