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LOUISIANA LEGISLATURE.

Official Report of Legislature.

SENATE.

THURSDAY, MORNING, March 21, 1850.

The Senate met pursuant to adjournment. The Hon J B Plaucbe, Lieutenant-Governor presiding.

Mr Duncan called up the act in relation to the publication of judicial advertisements.

Mr Duncan moved that the parish of Orleans be excepted from the provisions of the bill.

Mr Clark moved that the parish of Vermilion, be excepted.

Mr Bryce moved that the parishes of Rapides be excepted and it further ordained that the publications shall only be made at the instance of the defendant.

Mr Kay There are so many exceptions that it would be better to lay the bill on the table.

Mr Swayne said I think the bill is impolitic and mischievous and unnecessary It will be increasing an additional tax on delicacy, and increase the costs, and will only be of benefit to the printer, if neither the defendant nor the creditor desire the publication, why should it be made?

Mr Coleman

Mr President—I am in favor of the bill now under consideration. It obtains the publication of Sheriff sales in the paper published in the parish, where the sale is to take place and if there is no paper, then the Sheriff advertising the sale pointed out by law—it fixes the price—one dollar for every hundred words for the first session, and fifty cents for every subsequent one, and where more than one paper is published in the parish the defendant has the selection of the one in which the advertisement is to be made It is true, that under the present law, the publication of the sale in a newspaper can be made at the request of plaintiff or defendant, but there is a vast number in the State who are ignorant of this right, and I have often known property to be sacrificed, because the public were ignorant of the sale there are but a few persons, those mostly speculators, who ever look at the Court House door, or other public places to see what sales are to be made, and this on the day of sale there are but few persons who present—but a newspaper enters almost every family—it can be read at the fireside and thus the public become acquainted with the sales that are to be made without being obliged to go in all kinds of weather to the Court House door—and even if they were disposed to be spectators, no advertisement would be seen, for it is well known, that they sal dom remain there but a few days, before they are torn down, or carried away by the wind and weather—I now ask not the aid of the law to sacrifice property, but only to satisfy the just claims of the creditor, and it is the duty of the Legislature to protect the rights of debtors as much as is possible—it is the misfortune that their property is seized, and sold independently of their will, and the cruel prejudice of the law ought to be tempered with mercy

A law of this kind protects the ignorant, as well as the learned, and it is well known to every lawyer that there are thousands who are entirely unacquainted with the most ordinary laws, and there are many who do not know that they have the right to advertise their property if they think proper so to do. This law forces the Sheriff to advertise under the restrictions before mentioned, and thus every one will know, when the sale is to be made, and the property of the unfortunate debtor will not be sacrificed, and become the prey of greedy speculators—I know two cases that occurred in Lafourche Interior, and one in Terrebonne, where the property of the debtor was sacrificed on account of no publication having been made in the newspaper, and there are many other cases that have occurred in different parts of the State

The bill now under discussion is necessary to prevent collusion between the plaintiff in debt and and for the protection of other creditors. Under the present law, a creditor who holds the first mortgage may combine with the debtor to purchase the property for only the amount of his mortgage, with the understanding he is to pay a certain amount to the debtor, when the property is worth much more, and thus all the other mortgagees would lose their claims, and if the debtor had no other property, they would be unjustly deprived of their just claims—ought not the Legislature to give as much publicity as possible to such sales, so as to prevent the community from being wronged in so foul a manner Under the present law, where no publicity is given, such frauds have been practised, and will when there were but few persons present at the sale.

I would also remark, that the bill now under consideration, will not force the debtor to pay the costs that at present, for the mileage of the Sheriff, in going up the interior parts of the various parishes of the parish, and the cost of the copies of the subpoeds up amount generally to as much as the cost of advertising it in a paper, and yet the costs are made of the present bill The law as it now exists requires the publication in newspapers of the judicial sale of the property of succession, why should not the same publicity be given to sales under execution—it is wise and necessary in the one case, it is equally so in the other—Editors generally have as much to protect their interests, as unfortunate and ignorant debtors who may see their little property seized by the officers of the law, and unjustly, owing to their ignorance of their rights and without any knowledge of the wise course of action—they may not have the means to make the publication as is desired—under the present law it must be done at their own cost, and Editors may refuse to trust them, and their property might thus be sacrificed, whereas under this bill, the Sheriff is compelled to advertise the property, and the cost of advertisement will come out of the proceeds (if the property seized should be sold) He (the debtor) will be sold at advantage to the press of the State, but as it not granted to them at the average of the debtor but or lie good, certainly no injustice can be done to the Editors thereof, for it is the great organ by which light and intelligence are diffused throughout the community—I hope then, Mr President, that the Bill will meet with no opposition in this body

Mr. Kay I shall insist on my motion If we are to have a general law, let it be made so none. For myself I am satisfied with the law as it is

Mr Drew I am not entirely in favor of the bill, but I pass two-thirds of the provisions I think it would be more economical than the present plan

The question was taken on Mr. Kay's motion to lay the table Negatives, 12

Mr Peck moved to except from the provisions of the bill the parishes of Catahoula, Franklin and Caldwell.

Mr Van Wickle I move to except the parish of Point Coupee. I have heard no complaint against the present system.

Mr Sigur I move to lay all the amendments on the table. I am opposed to partial legislation. It has but a good one, it should apply to all the State. If it is a bad one, it should apply nowhere

Mr Ray opposed the bill. The plan was more expensive than the present one, and was not called for by public opinion

The question was taken on the adoption of the first section, and the ayes and nays were called for —16 ayes, 6 nays.

The second section was taken up and adopted

The question was taken on the final passage of the bill—12 ayes, 8 nays

On motion of Mr. Sigur, the Senate took up the bill for the protection of the cities of Freeport, Carrollton, Lafayette and New Orleans from floods, i.e. The House objected on the ground

Mr Sigur moved that a Committee of Conference be appointed and the President designated Messrs Sigur, Dufour and Duncan the Committee on behalf on the regular

Mr Gardere called up the act in relation to the recording and cancelling of mortgages and sales in the parish of Orleans

Mr Mouse considered that the object of the act was to put money in the hands of the Recorder of Mortgages, and I oppose it

Mr Dufour thought the bill a good and necessary one, and demanded for the protection of the public interests. It passed.

On motion of Mr. Gardere, the Senate took up an act to provide for the representation of the city of Lafayette in the General Council of the city of New Orleans.

Henry Beebe and Dufour opposed it, and it was laid on the table subject to call

Mr Gardere called up the following bills

Act creating certain justices. Passed.

Act authorizing the appointment of P. White, Notary Public, to be deposited in the office of the Recorder. Passed.

Mr Gardere called up the following bills

Act to create the office of an additional Notary for the parish of Ascension. Passed.

Act to protect the town of Donaldsonville—(appropriating $3500 out of the Internal Improvement Fund) Passed.

Mr Gardere called for the act—3 ayes, 16 nays. The bill was then laid on the table

Resolution directing the State Engineer to make an examination of the break water at the mouth of the Bayou Lafourche. Passed.

Resolution directing the State Engineer to make improvements at the mouth of the Pangchipahalia river. Amended, on motion of Mr. Van Wickle

Mr Hewlson called up the following bills

Act to suppress gambling in the parish of Caddo

Mr Dufour moved to lay it on the table, which motion prevailed

Resolution requesting our Senators and Representatives in Congress to obtain the passage of a law establishing a national road from Milligan's Road. Passed.

Act to establish a Mayor and Recorders' Court in the parish of Orleans, under the 129th article of the Constitution.

Mr. Hereford called for the ayes and nays—13 ayes, 8 nays. Passed.

Mr Hereford called up the following bill

Act to extend the magistracy of the Washington Fire Company—(Act 1848) Passed

Act to repeal the act of Baton Rouge, from minus and jury Duty. Passed

Act to the relief of John Burke. Passed.

Resolution for the opening of Bayou Manchac.

Mr Adams suggested a proviso, that said bayou shall not be opened to the Mississippi river. Adopted as amended.

Mr Lacoste called up the following bills

Act in relation to the national drains and outlets of the Mississippi river. Laid on the table.

Act for the relief of Francois Saucier, a veteran of 1814 '15. Passed.

Mr. Moore called up the following bill

Act for the relief Francois Prentz. Passed.

Mr. Moore introduced a joint resolution, suspending the resolution, adopted by the two Houses, for the purpose of permitting him to introduce a bill of four sections, to amend the school law. It was a matter of great importance. The resolution passed, and was taken to the other House for concurrence

Mr. Monroe called up the General Appropriation Bill. Amended and passed

Mr Hewlson called up the following bills

Act to suppress gambling in the parish of Caddo

Mr. Dufour moved to lay it on the table, which motion prevailed

Resolution requesting our Senators and Representatives in Congress to obtain the passage of a law establishing a national road from Milligan's

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New Orleans, Lafayette and Jefferson issued

Mr. Wilson offered to lay said bill on the table

Mr. Sigur here raised a question of order, "whether the only question to be taken was not", Shall the Senate concur in said report?

Mr. Wilson, pro tem., decided that Mr. Waddill's motion was out of order, and that the question was: Shall the report be adopted or rejected?

Mr. Waddill opposed the report, and Mr. Duncan sustained it.

Mr. Ray called for the ayes and noes on Mr. Sigur's motion to concur 10 ayes—14 noes.

So the report was not concurred in, and the House were, on motion of Mr. Moore, informed thereof.

Mr. Sigur called up the following bill:

Act to regulate the duties of Auctioneers. Passed.

Mr. Sigur reported an act to repeal an act amending the act incorporating the Carrollton Railroad Company, approved March 6th, 1843. (This act authorizes the Council of the Second Municipality to withdraw the privilege granted to the Company of running their cars through the streets)

Messrs. Sigur, Drew and Dufour advocated the passage of the bill.

Messrs. Gardere and Van Wickle opposed it.

The bill passed

By a message from the House, the Senate were informed that the House insisted on their amendments to the Contingent Bill, and asked a Committee of Conference.

On motion, a Committee of Conference was appointed on behalf of the Senate.

The President pro tem. appointed Messrs. Dufour, Drew and Coyle, the Committee.

On motion, the Senate went into Executive Business.

When the doors were opened:

Mr. Dufour, of the Committee of Conference on the disagreement of the two Houses on the Contingent Bill, made a report, which report was taken up and concurred in.

Mr. Haralson, of the Committee on Elections, reported that the several members of the House chosen at the last general election have been duly elected.

Mr Bryce introduced the following resolution:

Resolved, That twenty days be allowed to the Translating and Enrolling Clerks and Reporter of the Senate to bring up the unfinished business of the Senate after the adjournment, and that the Committee on Contingent Expenses are authorized to appoint them (if they think proper) accordingly. Passed.

Mr. Van Wickle introduced the following resolution:

Be it Resolved, That a Committee of three members of this Senate be appointed as a Standing Committee on Levees, and have full power during the recess of the Legislature to act and collect information relative to the levees now, the making and repairing of levees, the present system of drainage throughout the State, and all matters connected therewith, and to propose such amendments as they may think proper and advisable for the better protection from overflows by the river, of the alluvial lands on the Mississippi, and the drainage of the same, and to report by bill or otherwise.

On motion of Mr. Drew, the foregoing resolution was amended by increasing the Committee to five members.

Mr. Van Wickle declined being a member of said Committee.

The President, *pro tem.*, appointed Messrs. Ricker, Clark, Waddill, Chambliss and Bulton on said Committee.

Mr. Clark introduced the following resolution, which was unanimously adopted:

Resolved, That the thanks of the Senate be presented to Lieut. Governor J. B Plauche, for the impartiality, zeal and ability he has displayed in the discharge of his duties as the presiding officer of this body.

Mr. Drew in the chair:

Mr. Bryce introduced the following resolution, which was unanimously adopted:

Resolved, That the thanks of the Senate be, and are hereby tendered to the Hon. J. G. Bryce, for the impartiality, ability and courtesy with which he has discharged his duties whilst presiding this body.

Mr. Bryce returned his thanks to the Senate in an eloquent and impressive manner.

Mr. Van Wickle introduced the usual resolution, appointing a Committee to wait on the Governor, informing him that the Legislature were now ready to adjourn *sine die*, and inquire whether he had further communications to make.

The President, *pro tem.*, appointed Messrs. Van Wickle, Tatman and Sigur, the Committee on the part of the Senate.

Mr. Van Wie informed the Senate that the Joint Committee to wait on the Governor had discharged the duty assigned them, and that the Governor had no further communications to make.

The two Houses mutually informed each other that they were ready to adjourn, *sine die*.

Mr. Coyle introduced a resolution, returning thanks to Horatio Phelps, Esq., for the faithful and efficient manner in which he has discharged his laborious and responsible duties

Mr Hereford introduced the following resolution:

Resolved, That the thanks of the Senate be, and are hereby tendered to Mr. Robert J. Ker, Reporter of the Senate for the able and impartial manner in which he has reported the Debates of the Senate

A vote of thanks was also adopted

And on motion, the Senate adjourned, *sine die*.

ROBERT J. KER,
Reporter of the Senate.

Remarks of Mr. Duncan and others, on the Bill to take the sense of the people upon calling a Convention to remodel the Constitution.

IN SENATE,
Monday Evening, March 4, 1850.

The question pending, being a bill to take the sense of the people upon calling a Convention to remodel the present Constitution.

Mr. Duncan said, that he had preferred that the direct question should be put, instead of the question of the indefinite postponement. The proposition to calls Convention had originated in the popular branch, and had been supported by the multiplicity of amendments which were proposed to the existing organic law.

The present Constitution is one respect, might be regarded as a fraud upon the people. The Constitution of 1845, was one of the best constitutions that any State could boast of, with but two exceptions. It was the work of the ablest and most learned that ever adorned the Statesmen such men as Livingston and Poyer. What purpose was there in confining the Convention to two objects, and to two objects only? First, to an enlargement of the elective franchise and to change in the political tenure, for I contend, in the organic sense, was the call for a Convention issued. In exercising an entire new Constitution, and in complying of the specifications, they participated in trial upon the people. The two material changes being introduced in the new Constitution, which were demanded by popular sentiment, the people without an opportunity of examining it, voted in its ratification. But, I have never found a man, who on its adoption, has approved of it. I know Mr. people do not approve of it. It has been found, and will continue to be found a stumbling block in the way of legislation, and require constant alteration.

That it demands modifications and changes is fully shown by the great number of amendments that have been introduced, and the certainty that not a single one will receive popular sanction. It will have to be remodeled in many essential particulars, and the only question for us to determine is which is the easiest, most economical, and most wise of accomplishing the object. Is it best to call a convention to act at once, and make all necessary amendments, or to submit the amendments by piecemeal to the people—the result of which may be a want of harmony and unity between the parts retained and those substituted for the parts rejected. I think it is demonstrable that expediency and economy would be best promoted by submitting the whole question to the people for their decision. Their representatives, fresh from them, have decided upon constituting them. They are not afraid to do so. Shall we settle the force of the people, and refuse them the privilege of saying whether they will or will not have a convention. I am astonished at the opposition of gentlemen who have always professed so much confidence in the judgment and discrimination of the people? Are they afraid to trust the people? Gentlemen who have been so eloquent in portraying their devotion to the rights and interests of the people? The ayes and nays upon this question will show whether they practice talies with their professions.

Mr. Phillips said: Mr President, I beg to submit a few remarks. Under what authority are we convened here, and what oath have we taken in assuming our seats as the representatives of the people? Have we not sworn to support the constitution—solemnly sworn to support it, and are we not here under an authority? And yet it is gravely proposed that we shout of demolish and bring it into discredit and disrepute by placing upon it the ban of our opprobrium? Where is our authority? Where is our oath? Have the people deserted us to repudiate it? Have they spoken to us for a new constitution? It seems to be a little odd, I think, that we should subvert a system which they themselves, through their delegates, deliberately formed, and which they have sanctioned with almost general unanimity? We are seeking to destroy it, not by direct means, but in a roundabout way. We have no authority to do that. We have taken an oath to support each and every part of its provisions, and we are bound to obey them. Where do gentlemen find a warrant for their proceeding in that instrument? It prescribes only one mode for amending and altering its provisions, and gives the Legislature no authority to call a convention for the purpose. If gentlemen will give themselves the trouble of examining the discussions in the convention, they will find that not a single member of that body contended that the Legislature had the power to take the initiatory steps to call a convention, or to submit the question of calling one to the people. If gentlemen will take up the arguments, they will find that neither Whig nor Democrat advocated any such doctrine. That the people themselves have an inherent right to change their form of government is another question. On the contrary, such a power in the Legislature was expressly denied. There was one party in the convention who advocated the mode of submitting amendments to the constitution to the people, by a vote majority, while another party were for holding the power in three fifths. Mr Soule was in favor of three fifths. The debates will establish the fact, and no one on examining them can arrive at any other conclusion than that the framers of that body was, the Legislature had no right to call a convention. Then, sir, if they have no right, in an unwarrantable manner, to call a convention, have they the right to bring about a convention by indirect means? To discredit the very instrument which they have sworn to support, and under whose powers they act? They have no such right. The people may meet in their primary assemblies to abolish their form of government. They have a right to revolutionize their government when it does not suit them; but their constituted agents, acting under the powers conferred by a written constitution, cannot do it. I take that position, and maintain we have no right to change the constitution in any other mode but the one which it has expressly pointed out. If we have such power, I ask gentlemen to point it out. They say that the Legislature have the power to amend the constitution. Then I would ask them what are we proposing to do? Is it merely chalk play? Is the constitution good for nothing? Has it no conservative power? And is it subject to the caprice or whim of a majority of the Legislature to overturn it, when the constitution has prescribed that no amendment shall be proposed to the people, unless it be sanctioned by a three fifths vote of both Houses? And who knows but that the report of a convention, forced suddenly upon the people, would be, when they had not had time or opportunity to examine and dispassionately inquire into the necessity for calling one?

But, say the advocates of the measure, the people have been deceived in ratifying the present Constitution. They have been misled—entrapped. They have decided without reflection, without examination, with no knowledge of the features of the Constitution—in perfect ignorance of its blemishes—This is, indeed, a strange argument. It is a diversable imputation upon their intelligence. It will not be pretended that a large majority did not understand it—that there was not a free expression of public sentiment. But the people, say gentlemen, did it in ignorance; If what they tell us be true, the people were cheated. They may have been deceived, they may have been misled; but if this be true, what guarantee have we that they will not be gulled again. They are the same people, subject to the same influences, and the same passions. They had time before to deliberate, ample time to determine, and they did determine the question for themselves and for us. What evidence have we that they have changed their minds? Have we any authority to say they have change in public sentiment? At the date of the last general election, no such question was mooted, and it formed no part of that political canvass. Gentlemen, gentlemen, all of a sudden, have discovered that the Constitution is roughly imperfect performance, that it must be hewed up root and branch—and on what evidence? Why, sir, they have let upon the expediency of making a change against it and making it unpopular, so as to influence the public mind against it, and to effect their purpose indirectly, by means of promoting a Convention.

I have no fears, Mr. President, of gentlemen intentionally committing a fault or any other delinquency. But I am the concerning the course in a matter of such importance. I am supporting and adopting that Constitution, which I believe to be the work of the people. I feel bound to maintain the power and to act in my capacity as a member of the Legislature in accordance with the provisions of the Constitution