

DEBATES
of the
Missouri Constitutional
Convention *of* 1875



Edited by
ISIDOR LOEB, PH.D., LL.B., LL.D.
and
FLOYD C. SHOEMAKER, A.M., LL.D.

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The vote was then announced as above given.
Section 4 was then read as follows:

Sec. 4. The General Assembly shall enforce the provisions of this article by appropriate legislation, and provide suitable penalties to carry the same into effect.

Mr. McAfee: I move to lay that section on the table.
The motion was agreed to.

Mr. Switzler: I move that the report be referred to the Revising Committee with the usual instructions.

Mr. McAfee: I suggest that the gentleman frame his motion so [69, 232] as to instruct the Revising Committee to place this first section in the Report on Revenue and Taxation.

Mr. Adams: I was going to suggest that we better reconsider the first.

Mr. Switzler: I temporarily withdraw the motion.

Mr. Adams: When the first section was passed it was supposed that we were to adopt the second section, if we adopt the first section it may be an excuse to impose a tax on all these several subjects at once and not on them separately and I think it ought to be reconsidered and I make that suggestion to the Convention.

Mr. Fyan: I would ask the member if the words "subject to taxation" do not cover it?

The President: Does the gentleman from Boone (Mr. Switzler) make any proposition?

Mr. Switzler: I renew my motion to refer to the Revising Committee.

The motion was agreed to.

[69, 233] Mr. Switzler: Is it in order to introduce a resolution?

The President: No sir.

Mr. Taylor (of St. Louis): I desire to make a report from the Revising Committee on Preamble and Bill of Rights and also on Boundaries. The Committee have revised and corrected said articles and arranged them in

that the article should be numbered in Roman numerals and I have made that correction in the Report that I have made. If there is no objection I ask the unanimous consent of the Convention that that correction be made.

[69, 234] The President: Leave will be granted.

Mr. Taylor (of St. Louis): I also call the attention of the Convention to the only material alterations that have been made in these articles.

Mr. Shields: Will the gentleman permit me to make a suggestion to him that this report ought to be read sec-

Section 16. That imprisonment for debt shall not be allowed except for the nonpayment of fines and penalties imposed for violation of law.

Section 17. That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

Section 18. That no person elected or appointed to any office or employment of trust or profit under the laws of this State or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging.

Section 19. That no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable.

Section 20. That no private property can be taken for private use, with or without compensation, unless by the consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural purposes in such manner as may be prescribed by law; and that whenever an attempt is made to take private property for a use alleged to be public, it shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public.

Section 21. That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein di- 606] vested. The fee of land taken for railroad tracks without consent of the owner thereof, shall remain in such owner subject to the use for which it is taken.

Section 22. In criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy, public trial by an impartial jury of the county.

Section 23. That no person shall be compelled to testify against himself in a criminal cause, nor shall any person after being once acquitted by a jury, be again for the same offense, put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted, fail to render a verdict, the court before which the trial is had may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or, if the state of business will permit, at the same term; and if judgment be arrested after a verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

tion by section, and he can make his suggestions as the sections are read.

Mr. Taylor: I will do it if it is deemed proper.

Mr. Spaunhorst: Mr. President, I would now move that the propositions before us be considered read a second time.

Mr. President: It will be so ordered unless objection is made.

Mr. Halliburton: I make a point that the rule does not require it. It has been read and adopted.

Mr. Spaunhorst: Then we will work by the rule, if we have a rule we will abide by it.

Mr. Gantt: Is any motion for the amendment of this instrument in order?

Mr. Spaunhorst: If I may be permitted to state I will give my explanation [69, 235] of the rule. After the whole matter has been gone through with in this Convention and the articles reported by the Committee on Revision it is then open for amendment, and if there be no amendment it is ordered to a second reading and after that is done it is again referred to the Committee and when it comes back from the Committee then a 3d reading is

Section 24. That all persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

Section 25. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Section 26. That the privilege of the writ of *habeas corpus* shall never be suspended.

Section 27. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

Section 28. The right of trial by jury as heretofore enjoyed, shall remain inviolate; but a jury for the trial of criminal or civil cases, in courts not of record may consist of less than twelve men, as may be prescribed 607] by law. Hereafter, a grand jury shall consist of twelve men, and nine of whom concurring may find an indictment or a true bill.

Section 29. That the people have the right peaceably to assemble for their common good, and apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

Section 30. That no person shall be deprived of life, liberty or property without due process of law.

Section 31. That there cannot be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

Section 32. The enumeration in this Constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

had and the vote is had and there it stops. As it now comes from the Committee it is open and liable to amendment.

Mr. McAfee: I desire to ask the gentleman a question.

Mr. Gantt: I submit the rule—

Mr. McAfee: I wish to ask a question as to the construction of the rule if the gentleman from St. Louis (Mr. Gantt) will permit.

Mr. Gantt: Very well.

Mr. McAfee: Does not that rule contemplate amendment by reconsideration? Do you construe that rule to mean after we have fully [69, 236] adopted what we have done, it is still subject to amendment and does not contemplate a reconsideration of the vote at all.

Mr. Norton: I rise to a question of order. This 44th Rule has never been adopted by the Convention as I understand it.

Mr. Shields: The gentleman is mistaken about that. When the Convention first appointed Colonel Brockmeyer Chairman of the Committee on Rules he reported that the rules of the last Convention be the rule for this Convention until the Committee reported new rules.

Mr. Norton: My recollection is except the 44th Rule.

Mr. Gantt: I will state by way of information that here are the words "Constitution of Missouri" and then occurs the words "Preamble." Now I think that the Convention if they will look at the instrument will see that that word "Preamble," is, at the very best superfluous and [69, 237] that its office is to say "Now we are going to begin." It is like putting over a horse, or dog, or man a writing as to what it is. "Know all men that this is a dog." "Let every one take notice that this represents a horse." This Preamble speaks for itself. I say that that word "Preamble" ought really to be stricken out, and I think it was adopted rather hastily by the Revising Committee, and that they were themselves ready to reconsider it after it had been voted in.

I move that it be stricken out.

Mr. Halliburton: I rise to a point of order. It has been said that all these things are subject to amendment at this time. If so, we might as well make up our minds to stay here until next December; if everything is kept open for amendment the same as it was the day that the propositions were introduced, we have made no progress, we have [69, 238] made less than none.

The President: I will draw the attention of the Convention to Rule 44.

There shall be a standing Committee of Five whose duty it shall be to revise every article or amendment of the Constitution after it is adopted by the Convention and report the same to the Convention on the next day or as soon thereafter as practicable, and after being thus reported it shall be read on two several days before it shall be finally acted on.

Now the Committee on Revision has reported one subject to the Convention; that will be read now and it will have to lie over according to this rule until tomorrow when it will be read again. The view which the Chair takes in regard to this amendment is this; that under the rule [69, 239] it is not competent to amend, alter or to change any proposition which has been reported by that Committee unless the Convention first reconsider that proposition, and then it is competent for them to do it; but until it is reconsidered it is not competent to offer any amendment.

Mr. Gantt: I would inquire whether it appears that this Convention has by any action adopted that cabalistic word "Preamble?"

The President: I do not understand—

Mr. Gantt: I would inquire Mr. President with all solemnity whether the Convention has at any time—

Mr. Fyan: I rise to a point of order. I wish to know what is before the body.

Mr. Gantt: I make any inquiry of the Chair. The gentleman from Webster will be good enough to observe—

Mr. Fyan: If we suspend the rules is this report before the Convention?

Mr. Gantt: I suppose whether it is [69, 240] or not I can make an inquiry of the Chair, and that I am proposing to do.

The President: The gentleman will make his inquiry.

Mr. Gantt: I would inquire Mr. President whether the Convention has at any time adopted that word "Preamble." Whether any action of this Convention can be quoted in aid of the appearance of that word Preamble on that page? I believe not. I submit the question to the Chair.

Mr. Taylor (of St. Louis): I would like to ask the gentleman a question. If the Convention has at any time adopted the word "Article," and the word "Boundaries."

Mr. Gantt: No, they will only do that in case they pass this without amendment.

Mr. McAfee: I move sir that the first reading of this bill as it comes from the Committee be dispensed with and the rules suspended, and that it be read a second time and [69, 241] that we act on it now.

The President: The Chair will have the report of the Committee read and then it will stand over until tomorrow to be read a second time.

Mr. Shanklin: I move to suspend the rule and that we take it up for consideration now.

Mr. Shields: I desire to make a suggestion in regard to this matter which I think will relieve us of any difficulty. It is evidently the intention of the 44th Rule that this Article should be read and reported by the Revision Committee, and if the amendment be read the third time the only way we can get at whether or not it is to be amended is to have it read first. I suggest in the first place that there have been amendments made by the Revising Committee that we do not know whether the Convention will agree to or not, consequently my suggestion is, that this second reading, should be [69, 242] section by section, unless objection is made be considered adopted, and when we get to articles or sections that are amended by the

Revising Committee that the Chairman explain to the Convention what they are, and then when that is done we can move to suspend the rule, read it a third time and place it on its passage. It seems to me that is the regular way for us to get at it.

Mr. Broadhead: Will the gentleman allow me to ask a question. If the question would not still arise whether any one of these articles may not be amended or stricken out, just as if they were originally introduced in this Convention?

Mr. Shields: I understand the Chair decided the motion which was that an amendment cannot be received unless there be a motion to reconsider. That being the position of the Chair I took it for granted—

[69, 243] Mr. Broadhead: I had not heard that.

The Chair: The report of the Committee must be first read.

Mr. Gantt: Do I understand that to be the ruling of the Chair as to the word "Preamble"?

The Chair: The Chair has not ruled in relation to the word "Preamble." I do not know how it came there.

Mr. Shields: I don't know that there has been any motion made but I will make that motion if it is in order.

Mr. Gottschalk: Mr. Shanklin moves to suspend the rules and read it a second [time?].

Mr. Spaunhorst: I made the motion long ago.

Mr. Shields: I rise to a point of order.

Mr. Taylor (of St. Louis): I move that the reading of the report be dispensed with and that it be read section by section: and that it be read a second time now.

The President: The question will be on reading it a second time, section by section. It will be so ordered unless [69, 244] objection is made.

The Secretary read as follows:

We the people of Missouri—

Mr. Gantt: We have not begun at the beginning (Laughter.) Gentlemen may laugh I can not prevent their

cachinnation but we are here for a serious purpose and I want this amended so that we may not be laughed at by the people of this State.

The Secretary then read:

Constitution of Missouri—

Mr. Massey: Why do you not make a motion to strike out—

Mr. Gantt: I will when we come to it—

The Secretary read:

Constitution of Missouri, Preamble—

Mr. Gantt: I move to strike out that word.

Mr. Roberts: I second that motion.

Mr. Halliburton: I make the same point of order. If it is in order to amend in this it is in everything.

The President: I do not understand the gentleman.

Mr. Halliburton: If we have a right to move to amend by [69, 245] striking out the word "Preamble" we have a right to move to amend everything else. I am answered by the member here that it has never been put there. Well, if it has never been put there we have nothing to do with it.

The President: The Secretary informs me that the word "Preamble" was not originally there.

Mr. Taylor (of St. Louis): Mr. President, the word "Preamble" was put at the head by the Revision Committee just as the word Article, to the different sub-heads has been put throughout to these different articles. The Convention never did adopt any one of these words in that form. Now the Convention in passing upon any one of these reports never passed upon the question as to what should be the style of these articles or as to the number of the articles, or as to how they should be numbered or as to how they should be divided into sections. All these [69, 246] things were left to the Revising Committee and so it was in regard to this word "Preamble." It was a question in Committee whether there should be any heading in the nature of a preamble; and the Committee

adopted the word "Preamble" as a suitable heading and that is the way it came there.

Mr. Switzler: I will give my reasons why the Revising Committee adopted the word "Preamble," and why it ought not to be struck out. It is because we found it in the Constitution of the United States. We found it in the first Constitution of the State of Missouri. We found it in the Constitution now existing in this State and I believe in almost all of the Constitutions of the different states.

The Revising Committee did not believe that they were wiser than the men who [69, 247] founded the national government.

Mr. Alexander: I would ask the member whether the word "Preamble" is in the Constitution of the United States?

Mr. Switzler: I have it here.

Mr. Alexander: I have it here and it is not there.

Mr. Switzler: Well your revision is not correct. (Laughter.) We propose to commence the Constitution of Missouri, "We the people of Missouri," and there is nothing that I can see why it ought not to commence with the word "Preamble."

The President: The Chair will inquire—

Mr. Switzler: I desire sir to ask the member from Monroe to give me the Constitution to which he alludes.

Mr. Alexander: Page 20 of the Revised Statutes.

Mr. Switzler: If he will look on the margin.

Mr. Alexander: I would ask if that is part of the Constitution in the marginal notes?

[69, 248] Mr. Switzler: Of course it is, and I trust the Convention will not strike it out.

The President: The Chair will inquire if the word "Preamble" was part of the article submitted to them or is it a matter that they put in themselves?

Mr. Taylor (of St. Louis): The report as it came from the Convention had no word that constituted a head at the beginning of the Preamble. The resolution that referred the article to the Revision Committee was in these

words—"Preamble and Bill of Rights adopted by the Convention," but there was really no such word at the head of the article when it came to the Revising Committee, no more than there was the word article. There was no heading at all to the articles as they came to the Revising Committee from the Convention, and necessarily there had to be some heading to these articles. [69, 249] I state further that this putting of the word Preamble at the head of the Preamble is not as strange a thing as the member from St. Louis (Mr. Gantt) has suggested, as the Constitutional Convention of the State of Pennsylvania as late as January of last year adopted that precise mode of putting the word Preamble at the head of the Constitution.

Mr. McAfee: Mr. President there is no necessity for any confusion about this matter of sub-headings in this article. This really sir is no part of the Constitution. It is put there for convenience by the Revising Committee and it is proper that they should do that kind of work. Now it is perfectly proper to strike it out if we don't want it there, but there need be no confusion about striking it out. I move that we proceed to vote without debate on the subject.

[69, 250] The President: It is competent to entertain a motion to strike out.

Mr. Gantt: I made that motion and I was about to say in reply to what my colleague has said that I do not object to the word Preamble being here for the reason that it never appeared in any other Constitution, neither do I think the fact that it has appeared somewhere else, that other bodies have done this very equivocal thing to say the least, is any reason why we should do it, unless we are apes, or parrots, Mr. President and I hope we are neither.

I move to strike it out. It is senseless, it is superfluous, and the Constitution is complete without it, and in a great deal better condition without it.

The question was put & the motion to strike out was lost.

The Preamble and Bill of Rights was then read.

[69, 251] Mr. Norton: I move the adoption of the article in the Article on Boundaries just read.

Mr. Spaunhorst: I rise to a point of order. That motion cannot be entertained without a suspension of the rules. The rule is, "that it shall be read now a second time."

Mr. Halliburton: It has gone to a third reading. The first reading was dispensed with, and it has been read a second time.

The President: This is the second reading.

Mr. Norton: My motion was to adopt the article first, as read.

Mr. Spaunhorst: I rise to a point of order, that it requires a suspension of the rules. We are on the second reading. We have to go through the whole thing.

The President: The Secretary will read Article Two.

The Secretary then read Article Two, up to the twenty eighth section.

Mr. Taylor (of St. Louis): A portion of [69, 252] that article was transferred by the Committee on Revision to the Article on Miscellaneous Provisions. The remaining portion of this section as it came from the Convention was so transferred.

The words transferred were as follows:

It shall be the duty of the grand jury in each county at least once a year to investigate the official acts of all officers having charge of the public funds and to report the result of their investigations to the court.

That was transferred to the Article on Miscellaneous Provisions, by the Committee as a separate section.

Sections 30 and 31 were then read.

Mr. Taylor: Section 31 of the original article as it came from the Convention was transferred by the Committee on Revision to the Article on Revenue & Taxation. That section read as follows:

No money shall be drawn [69, 253] from the treasury but in consequence of appropriations made by law; and the regular statements of expenditure, and the receipts of all public moneys shall be published from time to time.

Mr. Shields: I move that the rules be suspended and that Articles First, and Second, be considered read a third time and placed on their passage.

Mr. Massey: Mr. President, I want to call the attention of the Revising Committee to something that I don't think is correct. Perhaps they are satisfied with it. I read an expression of this kind very frequently—"That there can be in this State neither slavery nor involuntary servitude"—I do not see why that word should be there. "There cannot be in this State any slavery &c," and in another case "that no person shall be deprived of personal liberty &c"—I do not think there is any necessity [69, 254] for that.

Mr. Taylor (of St. Louis): I would call the gentleman's attention to the first part of the declaration "and in order to preserve &c we declare." That is annexed to every section "we declare that."

Mr. Massey: That don't seem to be annexed to every section.

Mr. Adams: It is annexed that we declare that.

Mr. Massey: The enumeration in this Constitution—you don't say that the enumeration in this Constitution in some instances shall be made & not in others.

The President: What is the motion?

Mr. Shields: My motion was that the rules be suspended and that Articles One, and Two, be read a second and third time and placed on their passage.

Mr. Spaunhorst: I object to that and I do it on this ground. Our rules provide that it shall be engrossed, and until that is done it is not in accordance with the rule. If we should adopt the Constitution we must do it according to the rule. I will accept the proposition if the gentleman [69, 255] will make it "engrossed."

Mr. Adams: It has already been engrossed as I understand it.

Mr. Spaunhorst: It is not according to our rules.

Mr. Halliburton: Will you include in your motion that it be engrossed?

Mr. Shields: I am perfectly willing to include it in my motion although I don't consider it necessary, as I consider the report is an engrossment.

Mr. Broadhead: I wish to know whether it has been finally decided that a bill or article on its second and third reading is not liable to amendment? I have an amendment that I wish to offer to one of these sections.

The President: The Chair has decided that it is not subject to amendment unless there is a motion in the first place to reconsider.

Mr. Taylor (of St. Louis): I do not know that it is necessary to mention but there are in Section 20, two typographical errors that will be corrected by the Secretary [69, 256] in the first line of the section, and in the second line.

Mr. Ross (of Polk): I rise to make an inquiry whether the report sent from the Revision Committee would not be amendable as far as critical objections to the language is concerned, and be not amendable as to the intent of the section?

The President: There will be no objection to the correction of the typographical errors.

Mr. Shanklin: My attention has been called to what seems to be a mistake in the 21st section commencing on the second line with the words "such compensation shall be ascertained by a jury or a Board of Commissioners, of not less than three free holders." It is suggested that the comma after commissions in the third line should be transferred.

Mr. Norton: No objection will be made to that.

Mr. Mudd: I move that the Convention adjourn until 2 o'clock.

The motion was lost.

[69, 257] Mr. Shields: I offer the following:

Resolved: that the rules be suspended and that the Preamble and Articles First, and Second, be considered as engrossed and read a third time and placed on their passage.

The resolution was adopted.

Mr. Spaunhorst: I believe it is proper to call the Ayes and Nays upon this.

Mr. Shields: Under the rule the Ayes and Nays are to be called whenever an article is placed on its passage.

Mr. Halliburton: Is it now necessary to dispense with the 3d reading? The motion to dispense with its being read tomorrow requires it to be read today because it has to be read three several days, and the motion does not dispense with its reading.

Mr. Shields: The resolution is that it be considered read.

Mr. Halliburton: If that is the language it will do.

[69, 258] Mr. Taylor (of St. Louis): Mr. President I would like to know if we are to vote on each article separately?

Mr. Shields: The motion includes the Preamble and both articles.

The Ayes and Nays being ordered the question was put and the Preamble and Articles One, and Two were adopted.

Ayes 45. Nays 14 as follows:

(Insert)¹

Mr. Lackland (When his name was called): Mr. President, in explanation of my vote I will state that I agree to all that is contained in this Bill of Rights except that I object to the wording of Section 12 which I think ought to be corrected because it says—"No person shall for a felony be proceeded against criminally, otherwise than by indictment—" if it is necessary to proceed against them otherwise than by indictment. As for instance on a criminal examination or by other criminal proceedings. By putting in some other phrase [69, 259] there and correcting that it would be less objectionable and I could have voted for it. For instance "no person shall be proceeded against criminally otherwise than by indictment,

¹From *Journal*, II, 752-753.—Ayes, 45; Noes, 14; absent, 6; absent with leave, 3.