Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell—24.

NAYS—Senators Ball, Henry F. M., Piner, Smith, Wortham—5.

NOT VOTING—Senator Thompson.

Senator Henry of Cass presented the following protest, which was read and spread upon the journals:

"I protest against the passage of this act, for the reason that, in my opinion, it will prove to be injurious to the people.

"*First*—Because it has the effect of putting the Sheriff and his posse, with arms in their hands, upon horseback, with authority, under sanction of law, to ride over the State, at the State's expense, and shoot down men charged with crime, even before indictment is found, where such persons offer resistance or attempt to make their escape.

"*Second*—Because the practical working of this law will tend to further cheapen human life in the State.

"*Third*—Because the Sheriff, under this law, under certain circumstances, is empowered and licensed to inflict the death penalty at his discretion, even before indictment is found or conviction had.

"*Fourth*—Because the Legislature will have no standard by which to measure the appropriations to meet the expenses that will be incurred under this law."

On motion of Senator Grace, the Senate adjourned until to-morrow at 9 o'clock A. M., by the following vote:

YEAS—Senators Blassingame, Brown, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry F. M., Hobby, Ledbetter, Martin, McCulloch, Moore, Motley, Piner, Stephens, Storey, Wortham—20.

NAYS—Senators Brady, Burton, Henry, J. R., McLeary, McCormick, Ripetoe, Smith, Terrell, Thompson—9.

FORTY-SIXTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, June 10, 1876.

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by Rev. Dr. Dickson.

The journal of yesterday adopted.

Senator McLeary presented the petition of many citizens of Menard county, "protesting against the removal of their county seat from the town of Menardville, and against the annexing of any more territory to their county, as it already contains 900 square miles, etc."

Read and referred to Committee on Counties and County Boundaries.

Senator Stephens, Chairman of the Committee on Federal Relations, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Federal Relations, to whom was referred Senate Joint Resolution No. 250, "instructing our Senators and requesting our Representatives in Congress to secure, if possible, the permanent establishment of a line of steam vessels to carry the United States mail once a week, between the city of Galveston and Brazos Santiago," have had the same under consideration, and instruct me to report it

back to the Senate with the recommendation that it do pass, with the following amendment, as an additional section:

"SEC. 2. That the Governor be, and is hereby requested to transmit a copy of this Joint Resolution to His Excellency, the President of the United States, the Postmaster-General, and to each of our Senators and Representatives in Congress." STEPHENS, *Chairman.*

Senator Carroll introduced a bill entitled: "An Act to carry into effect Section 39, of Article 16, of the Constitution.

Read by caption and referred to Committee on Statistics of Industry, Public Health and History of Texas.

Senate Bill No. 2, "An Act to organize County Courts, and to define their powers and jurisdiction," with the report of Judiciary Committee No. 2, recommending concurrence in all the House amendments except the fifth, seventeenth and twenty-fifth, was taken up, the report of the committee adopted, and all of the House amendments adopted but the ones specified aforesaid.

On motion of Senator McLeary, Senate Bill No. 235, "An Act to incorporate the city of San Antonio, and grant a new charter to said city, and to repeal certain acts herein named to incorporate said city," was taken up, the report of the Judiciary Committee, declaring that legal notice had been given, was adopted, and the bill re-referred to the Committee on State Affairs.

On motion of Senator Edwards, the rules were suspended, and Senate Bill No. 208, "An Act to amend an act to regulate proceedings in the District Court," approved May 13, 1846, was taken up, and 100 copies ordered printed.

On motion of Senator Edwards, the rules were suspended, and Senate Bill No. 186, "An Act to provide for the registration and payment of the indebtedness of the several counties of this State, incurred prior to April 18, 1876," was taken up and 100 copies ordered printed.

Senator Piner moved to suspend the rules and take up Senate Bill No. —, "An Act to amend an act entitled, 'An Act to establish a penal code for the State of Texas,'" approved August 28, 1856.

Senate refused to suspend.

Senator Storey in the chair.

Substitute for Senate Bill No. 119, "An Act to regulate proceedings in the County Court, pertaining to the estates of deceased persons," being the unfinished business, was taken up.

The President in the chair.

Senator Smith offered the following amendment as a substitute for Section 57 of the bill:

"SECTION 57. At the first term of the court, after an inventory and list of claims have been returned, it shall be the duty of the County Judge to set apart for the use and benefit of the widowed minor children and unmarried daughters remaining with the family, if there be either or any, of the deceased, all such property as may be exempt from execution or forced sale, by the Constitution and laws of the State, with the exceptions of provisions and forage on hand for home consumption, in lieu of which provision is made in Section 56 of this act. And, in case there should not be among the effects of the deceased any of the property so exempted, it shall be the duty of the County Judge to make an allowance of two thousand dollars, in lieu thereof, to such widow, children and unmarried daughters, or such of them as there be. In case

there be a part, but not all, of the property so exempted, the County Judge shall set the same apart as aforesaid; and in case said property, being only a part of the property so exempted, shall not amount in value to two thousand dollars, it shall be the duty of the County Judge to make an allowance to said widow, children and unmarried daughters, as aforesaid, of a sum sufficient to make up said deficiency in value, which said allowance or allowances thus made shall be paid by the executor or administrator, either in money, out of the first funds of the estate that may come to his hands, or in any property of the deceased that such widow, children or unmarried daughters may choose to take, at the appraisement, or a part thereof in, as they may select. If there be no property of the deceased, that such widow, children or unmarried daughters are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any thereof, it shall be the duty of the County Judge, on the application of such widow, children or unmarried daughters, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowances, or a part thereof, as the case may require. Any allowance made, as provided for in this section, shall be paid in the following manner:

"If there be a widow, and no minor children or daughters unmarried, remaining with the family, as aforesaid, the whole to be paid to the widow. If there be no minor child, or children, or unmarried daughters remaining with the family, and no widow, the whole to be paid to such minor child, or children, or unmarried daughters remaining with the family, or equally divided among said children and unmarried daughters, as aforesaid.

"If there be a widow and a minor child or children, or unmarried daughter, remaining with the family, one-half to be paid to the widow, and the other half to such minor child or children, or unmarried daughter or daughters, as aforesaid; or to be divided equally among such children and unmarried daughters, as aforesaid: *provided*, that if the estate of such decedent be not insolvent, nothing in this section contained shall be so construed as to prohibit the distribution and partition of said property, on allowance made in lieu thereof, as provided in this section, among the heirs and distributees of the estate: *provided, however*, that the homestead, if there be one, shall only be partitioned as provided for in the Constitution."

The amendment was lost by the following vote:

YEAS—Senators Crain, Edwards, Francis, Grace, Guy, Henry F. M., Ledbetter, McLeary, Piner, Smith, Stephens, Storey, Terrell, Thompson—14.

NAYS—Senators Ball, Blassingame, Brady, Brown, Burton, Ford, Henry J. R., Hobby, Martin, McCormick, McCulloch, Moore, Motley, Ripetoe, Wortham—15.

NOT VOTING—Senator Carroll—1.

Senator Thompson offered the following amendment as a substitute for Section 57:

"SEC. 57. At the first term of the court, after the inventory of the estate has been returned, it shall be the duty of the County Judge to set apart for the use and benefit of the widow and minor children and unmarried daughters remaining in the family, if there be either or

any, of the deceased, all such property as may be exempted from execution and forced sale, by the Constitution or laws of the State, including the homestead, that were on hand, in kind, at the time of the death of the deceased. And in case there should not be a homestead, nor among the effects of the deceased any of the specific articles so exempted, it shall be the duty of the County Judge to make an allowance in lieu of the homestead and the specific articles so exempted, to the widow, minor children and unmarried daughters remaining in the family, or such of them as there be, the sum of two thousand dollars. Should there be a homestead, and among the effects of the deceased a part but not all of the property so exempted, it shall be the duty of the County Judge to set apart for the use and benefit of the widow, and minor children and unmarried daughters, remaining in the family, as above stated, the homestead and such exempted property as there be, at their value; and should said part of said exempt property and the homestead together not amount in value to the sum of two thousand dollars, it shall be the duty of the County Judge to make an allowance to said widow, minor children and unmarried daughters remaining in the family, as aforesaid, in lieu of the difference between the value of the homestead, together with the specific articles on hand and the sum of two thousand dollars. And there should be on hand at the time of the death of the deceased, all of the specific articles exempted as aforesaid, but no homestead, it shall be the duty of the County Judge to value said specific articles, and make all allowances to the widow, minor children and said unmarried daughters, in lieu of the homestead, an amount of money equal to the difference between the said value of the specific articles exempted and the sum of two thousand dollars. And if there should not be on hand any or sufficient money to pay the substituted allowance provided for above, it shall be the duty of the County Judge to order the executor or administrator to sell for cash any property belonging to the estate to raise said sum. And in case of such sale neither the widow, the children, nor any person for them, shall be allowed to bid for or purchase any of the property so sold. And the money shall be paid out as follows: If there be a widow, and no children or unmarried daughters, the whole shall be paid to the widow; if there be a child or children, or unmarried daughter, and no widow, the whole shall be paid to such child, or to be equally divided among such children and unmarried daughters; if there be a widow and a child or children, one-half shall be paid to the widow and the other half to such child, or to be divided equally among such children and unmarried daughters."

Senator McLeary moved to amend Senator Thompson's amendment by striking out, "$2,000," wherever it occurs in the bill, and inserting, "$5,000," in lieu thereof.

Adopted by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Brown, Burton, Crain, Ford, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, Moore, Piner, Ripetoe, Smith, Stephens, Terrell, Wortham —21.

NAYS—Senators Carroll, Edwards, Francis, Grace, Guy, McCulloch, Motley, Storey, Thompson—9.

Senator Stephens, Chairman of Committee on Engrossed Bills, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Engrossed Bills beg leave to report that they have carefully examined and compared Senate Bill No. 40, "An Act to provide for time and place of holding sessions of the Supreme Court," and find the same correctly engrossed. STEPHENS, *Chairman.*

Senator Crain offered the following amendment to Senator Thompson's substitute for Section 57:

Amend by inserting, "two thousand five hundred dollars," in lieu of, "five thousand," wherever it occurs.

Senator Crain moved a call of the Senate.

Roll called, and Senator McLeary absent.

Senator Thompson moved that Senator McLeary be excused.

Lost.

On motion of Senator Smith the call was suspended.

Senator Crain's amendment was lost by the following vote:

YEAS—Senators Carroll, Crain, Francis, McCulloch, Storey, Thompson—6.

NAYS—Senators Ball, Blassingame, Brady, Brown, Burton, Edwards, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Terrell, Wortham—24.

Senator Storey offered the following amendment to Section 57:

Amend by inserting before the words, "five thousand," the words, "not more than," and add to the section, "*and provided*, that the allowance in lieu of the homestead and other property, shall not be of more than the average value of homesteads, and such other exempted property in the town, city, or neighborbood where the deceased resided."

Senator McLeary in the chair.

A message was received from the House, announcing the passage by that body, of substitute for House Bills Nos. 121 and 122, "An Act to amend Section 41, and to repeal Section 42 of an act entitled, 'An Act to amend an act to establish a code of criminal procedure for the State of Texas,' approved August 26, 1856, approved February 15, 1858; and to repeal Section 960 of an act entitled, 'An Act supplementary to, and amendatory of, an act to establish a code of criminal procedure for the State of Texas,'" approved August 26, 1856; approved November 14, 1864.

The President in the chair.

Senator Francis moved the previous question on the pending amendment.

Senator Hobby in the chair.

Senator Storey's amendment was lost.

The President in the chair.

Senator Thompson's substitute for Section 57 was lost by the following vote:

YEAS—Senators Ledbetter, McLeary, McCormick—3.

NAYS—Senators Ball, Blassingame, Brown, Burton, Crain, Edwards, Francis, Grace, Guy, Henry J. R., Henry F. M., Hobby, Martin, McCulloch, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Storey, Terrell, Thompson, Wortham—24.

Senator Brady offered the following amendment:

In Section 57, strike out all after the word, "provided," where it last occurs, and insert, "the allowance for a homestead, where none exists,

shall be for the sum of five thousand dollars, and the allowance in lieu of personal property exempt from execution, shall not exceed one thousand dollars: *and provided, further*, that if the surviving widow, or surviving child or children, shall have separate estate, then the value of such separate estate, owned by any such survivor shall be deducted from the share of such survivor in the allowance required by this section, and the amount thus deducted shall be retained by the executor or administrator as assets of the estate, unaffected by said allowance.

On motion of Senator Storey, Senator Carroll was added to the Committee on Finance.

On motion of Senator McLeary, the rule was suspended, and Senator Terrell, Chairman of the Committee on Educational Affairs, submitted the following corrected report:

COMMITTEE ROOM, June 6, 1876.

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Educational Affairs, to whom was referred Senate Bill No. 216, entitled, "An Act to establish and provide for the support and maintenance of an efficient system of public free schools," have had the same under consideration, and instruct me to report the same back, and recommend its passage.

The difficulties to be encountered in carrying out the constitutional requirements to establish and support an efficient system of public free schools, must be apparent to all. They result from the inefficiency of the available public free school fund, authorized and created by the Constitution, the sparse settlement in a large portion of the State, and to the fact that the executive heads of the educational department created by the Constitution consist of three officers, whose other official duties must demand all their time. The last difficulty, the bill reported attempts partially to obviate, by providing for a Secretary of the Board of Education, whose qualifications shall be of a high order.

The insufficiency of the school fund makes a more limited scholastic age than the present law establishes, necessary.

Unless one-fourth of the general revenue can be appropriated for public school purposes, it is idle to talk of establishing any system.

With one-fourth of the general revenue, we have an annual available public free school fund, as follows:

One-fourth of general revenue	$377,500
Revenue from poll tax	150,000
Interest on permanent school fund	145,000
Total	$672,500

It is estimated, from the most reliable data, that there are in the State one hundred thousand children, white and colored, between the ages of eight and twelve; this would give to each child of that age, over six dollars per annum, after deducting a proper amount for defraying the expenses incident to any system.

It appears from the report of the late Superintendent of Education that the counties of Collin, Henderson, Gillespie, Comal, Jackson, Navarro and Washington secured teachers for the year ending August 31, 1875, at an average cost per month, for each pupil, of about one dollar.

No reason is perceived why, under a proper system, teachers cannot be obtained in other counties for the same amount; if this can be done, then the available school fund would supply public free schools at least six months in each year, for every child in the State between eight and twelve years old.

The age indicated as the scholastic period is recommended as the most proper, because the rudimental branches of teaching, to which the public fund must be restricted, can be learned as readily between eight and twelve as at any other period; and if a more advanced age be fixed, the ability of the child, when older, to perform field and other labor will operate as a standing temptation to the cupidity of parents, who need its services elsewhere.

Our scattered population renders a free school system, whose benefits would reach all within scholastic age, impossible, unless children over and under scholastic age can be taught in the same public schools on terms to be agreed on between teachers and parents or trustees, and at the expense of the parent. For this, also, the accompanying bill provides.

From data in the office of the late Superintendent of Education, it would appear that local Superintendents throughout the State favored the abolition of school districts designated as now by geographical lines. The bill reported accomplishes this by providing for the organization of "school communities," to be established to suit neighborhood convenience, to be subject to the supervision of the State Board of Education, and to a Board of Trustees, selected by the parents, who contract with a licensed teacher for the best terms they can procure.

It will be seen that while the bill refers much to the convenience of school communities, and confides much to their interest, as a safe guarantee for a judicious use of their share of the school fund, its details and checks are indispensable to the system and to the safety of the public money appropriated. Respectfully submitted,

TERRELL, *Chairman.*

On motion of Senator McLeary, two hundred copies of Senate Bill No. 216, with the report of Committee, ordered printed.

On motion of Senator Crain, the Senate adjourned until Monday morning, at 9 o'clock.

FORTY-SEVENTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, June 12, 1876.

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

Reading of the journal of Saturday dispensed with, and the same adopted.

On motion of Senator Ledbetter, Senator Crain was excused for ten days.

On motion of Senator Thompson, an error in the printed journal of Saturday, in the substitute offered by him for Section 57 of Senate Bill No. 119, "An Act to regulate proceedings in the County Courts, pertaining to the estates of deceased persons," was corrected as follows:

Where "five thousand" occurs in said substitue, it should be "two thousand."