advantage of our position. Our acts will come under a very close scrutiny, and this course might savor of unfairness, and perhaps defeat the very object of the labors in which we are engaged. I, sir, will support any declaration that those who, prior to the adoption of this Constitution, are citizens of the Republic, shall be citizens of the United States; but beyond that I will not go, directly or indirectly.

Mr. Mayfield withdrew his amendment for the present, to enable Mr. Ochiltree to offer a substitute.

Mr. Ochiltree offered the following as a substitute for the substitute offered by Mr. Rusk:

"At the first elections held under this Constitution, every free man of the age of twenty-one years, who shall be a citizen of the Republic of Texas at the time of the acceptance of this Constitution by the Congress of the United States, shall be deemed a qualified voter.

In all succeeding elections, every free man of the age of twenty-one years, who shall have been a citizen of the Republic of Texas, or shall be a citizen of the United States, and shall have resided twelve months in the State, the last three months thereof in the county or district in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified voter: Provided, that no officer of the regular army, soldier, seaman or marine, in the service of the United States, shall be authorized to vote.

On motion of Mr. Mayfield, the Convention adjourned until half-past 8 o'clock, to morrow morning.

Saturday, Aug. 16th, 1845,
Half past 8 o'clock, A. M.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Jones, the Convention took five hundred copies additional of the "New Era," for this week.

On motion of Mr. Van Zandt, Mr. Clark was excused from attendance on the Convention, on account of sickness.

On motion of Mr. Burroughs, the Convention took up the

ORDERS OF THE DAY.

Mr. Ochiltree's substitute for the first section of the Legislative re-
port, being before the Convention, on motion of Mr. Cazneau, was laid on the table for the present.

Mr. Bache's resolution to appoint a Committee to wait on his Excellency the President of the Republic, to consult with him concerning the transfer of the government, &c., offered on yesterday, was taken up.

Mr. Moore moved to lay it on the table.

He said: I know the object in view is to establish a Provisional Government to supplant the present. And I am unwilling thus to call upon the President, immediately upon his arriving from a tedious journey, indisposed and fatigued as I believe he is. I believe that every motive of policy should induce the people to retain the present form of government and the nationality of Texas, until that period when we shall have the final assurance of merging that nationality in the great Union of North America. If we rashly and indiscreetly part with our existence as a nation, we place ourselves in the dependant situation of a territory; we throw off the treaty making power, and cut off all our treaties now established with the nations of the earth, placing ourselves at the beck and under the control of our enemies in the United States. There is a strong party there, as gentlemen are well aware, who state positively that they will not only meet our Constitution upon the floor of Congress, but will bring the question before the Supreme Court of the United States, and endeavor to defeat us there. Shall we then, I would say, thus foolishly cast off our nationality; shall we show ourselves so humble, so submissive, as to be willing actually to crawl \textit{sub judice}, as a conquered country, into the American Union? No, sir, let us stand as a band of freemen should, let us stand to the last by the independence which we have won by our valor, which has been sealed by the blood of many of our noblest and bravest patriots. Let us prove, that as that valor has secured us the admiration of the world, so our wisdom shall command its respect. Mr. President, in this matter, our steps should also be directed by motives of prudence. We have already ascertained that we shall require for the expenses of the government, an amount varying from fifty to one hundred thousand dollars. Cut off the revenue of the country, and what is the result? Are we not now told that large importing houses in Philadelphia, New York, and Baltimore, are about to ship large amounts of goods, which would replenish our exhausted treasury? It is not improbable that they would contribute to the treasury a sum not less than one hundred and fifty thousand dollars. It is ascertained that the revenue derived from the port of Galveston alone, during the last quarter, amounted to fifty thousand dollars. It is reasonable to believe, that as this revenue will be immensely increased, the treasury will receive within the next quarter, from the various
custom houses, from one hundred and fifty to two hundred thousand dollars. What will be the result? The treasury will be filled; the expenses of the government as now established will be paid; and the surplus will be sufficient to sustain it for the next year, or perhaps two years. Then the taxes of your country may be light; immigration will be encouraged, and by the end of a year or two, the increased number of emigrants and amount of wealth introduced into the country, will yield a sufficient income without oppressing the people with taxes. If we take this step, on the contrary, and by our vote here sweep away the Government, what will be the result? I have been warned already, that the merchants of my section have entered goods under protest, doubting whether we are still an independent republic. If this position is once assumed, and we admit that we are a territory of the United States, by that decision we preclude ourselves from the right of sustaining custom-house officers, and I believe the people will rise and declare that they will no longer submit to these exactions. The revenue will be thus cut off; our nation, instead of commanding the respect of other nations, will only excite their pity. If our enemies in the United States succeed, and two or three have been elected adverse to us, perhaps one vote may defeat us in the Senate, upon the resolution as submitted by President Tyler, and we shall then have to depend upon the treaty making power. But if we retain the Government and the President, we can then immediately form a new treaty under the propositions of Mr. Benton. And there is no question, but in a year or two more, public opinion would be so overwhelming in sustaining Mr. Polk, as to carry even a treaty through the Senate.

Mr. Bache said: I had no other motive in offering the resolution than that of showing the respect which I thought due from this body to the President. I had no intention to conjure up ghosts or hobgoblins, and no idea of crawling into the United States. I think I am the last man in this Convention to entertain such an idea. I thought it a matter of courtesy that the President should be consulted upon this subject. It has been in agitation some time, and the reason given for delay has been, that the President was not here. I have been looking out daily for him, from the general understanding among members, I thought it necessary for him to be here. At the same time, for my own part, I hold all plans in abeyance, until their correctness shall strike my mind, without being governed by the wishes or opinions of any individual.

Mr. Young offered the following as a substitute for the same resolution:

Resolved, That a committee be appointed to confer with his Excellency the President on such subjects connected with the business of the Convention, as he may think proper to communicate through them.
On motion of Mr. Van Zandt, the resolution and substitute were laid on the table.

Messrs. Hemphill and Hogg were appointed a committee to wait upon his Excellency the President, and invite him to a seat with the President of the Convention.

On motion of Mr. Cazneau, the report of the Legislative Department was again taken up.

The first section and the substitute being before the Convention,

Mr. Horton said: I rise with some diffidence, Mr. President, to offer a few remarks in relation to the motion which I propose to make. It will be recollected that the section now under consideration has been four days before this body, and if I mistake not, this is the fifth. Gentlemen have certainly had time to come to sound final conclusion upon the subject. If they have not done so, I would ask, how long it will take? I fear that some of us, when we go home, will be exactly in the same situation as a member of my acquaintance in Alabama, who was noted for making but one speech, and that was all for the people. When we go home, our constituents may ask us, why has your body been so long in session? "Why, on account of the smart men you sent there, to make long speeches; I did the best I could for the people, God bless them, how I love them!" I fear it will be asked of most of us, when we go home, why tarried ye so long? We read in the good old book, that Job was sorely afflicted, that he was one sore from the crown of his head to the sole of his foot. After having lost all his property and his children, he was urged to denounce his maker. He cried out, No, the Lord gave, and the Lord hath taken away; blessed be the name of the Lord. But I don't think Job was ever a member of a Convention I believe he never had that trial. I know, sir, that some individuals are firmly persuaded that it is a duty incumbent upon them to present either an amendment or a substitute for the first section of the bill now before the Convention; they feel that it is a duty they owe to their constituents. For these individuals I have the highest respect, and would do anything for them which I consistently could do. But I feel it a duty incumbent upon me as a representative of the country to bring the question to a decision as quickly as possible; for I think five or six days long enough to contend about one single position. I will, in conclusion, call for the main question, and I hope the House will sustain me. I trust it will not be looked upon as illiberal. I would not do it under ordinary circumstances; but I believe we have received all the light upon this subject, which gentlemen are capable of throwing upon it.

Mr. Evans moved to lay the section and substitutes on the table.
The chair decided the motion out of order, during the pending of the previous question.

From which decision Mr. Evans appealed, and the chair was sustained.

The question—shall the main question be now taken? was put;

Upon which the ayes and noes were called and are as follows:


So the motion was carried.

The main question being the adoption of the 1st section, the ayes and noes were called, and were as follows:


So the section was adopted.

Mr. Caldwell offered the following as an additional section, to come in as section 2d:

At the first and all subsequent elections held under this Constitution, all male emigrants to the Republic of Texas, of the age of twenty-one years, at the time of the acceptance of this Constitution by the Congress of the United States, shall be deemed a qualified voter, after a residence of six months.

Mr. Caldwell said: It is intended to cover the case of those who may have emigrated here in good faith, and would, under the laws of the republic be entitled to hold lands and to enjoy all the rights of citizenship after a residence of six months. I think the denial of these privileges under this Constitution, is a hardship which we have no right to impose upon them. Foreigners from Europe would have to go through a re-
sidence of five years, before they would be entitled to the rights of citizenship, or even to hold land. As this case is not provided for under one section, I propose to do it in another.

Mr. Ochiltree said he trusted the Convention would not be turned into a manufactory of citizens.

Mr. Cunningham thought the case already provided for.

Mr. Hemphill said: The whole will be construed together. The first section will stand for itself, and this for itself for the benefit of those to whom it relates. I think this would not be manufacturing citizens; it only makes these persons qualified voters. I think we ought to go further, and give them the right to hold land. I do not know whether aliens will have the power to hold land or not, under this Constitution. I think that those who come here at this time under the guarantees of our Constitution, ought to have conferred upon them the privilege of voting, and the right to hold land. They might not have the right to hold office, because not citizens of the United States till they are naturalized; but we can extend to them the right of voting. I am not in favor, however, of extending the right of voting to any emigrants from Europe after the adoption of our Constitution by the United States. The country might be filled up with foreigners, and the elections controlled by persons not owing allegiance to the United States.

Mr. Ochiltree said: I look upon the amendment as of a dangerous character, and I call upon this Convention to look at it well. If this Constitution shall be adopted on the 1st day of January, 1846, by the provisions of this section, an individual who arrives here on the 31st day of December, 1845, will be entitled to vote, while he who arrives on the 2d day of January following, if from the United States, will not be entitled to vote until after a residence of twelve months. If 3,500 emigrants from Germany arrive by the 31st day of December, they will be entitled to all the privileges of citizens, while 500 emigrants from Kentucky or Tennessee, arriving on the 2d of January, will have to remain twelve months. Is there any justice or expediency in this? I think not. I do not want our elections to be controlled by foreigners, who may vote at the command of two or three individuals. I want them to serve a novitiate: I, for one, am not willing to clothe them at once with all the powers of native born citizens.

Mr. Mayfield said: The gentleman contends that it would be a great hardship, if a class of foreigners, arriving here on the 31st day of December, should be entitled to vote after a residence of six months, while a Kentuckian or Tennessean, arriving on the 2d of January, would have to remain twelve months. Now, sir; let us take the other side of
the question. A Kentuckian or Tennessean arrives here on the 2d of January. He comes to the country to identify himself with its toils and struggles; he comes with his family to make it his home and abiding place. An emigrant from Europe sets out with his wife and children for precisely the same purpose, leaving his home and kindred to reside in Texas and identify himself with the country. Both arrive on the 2d day of January, according to the supposition in relation to the time of final action upon this Constitution. What then is their relative political position? The Kentuckian or Tennessean is allowed to vote in six months after his arrival, while the European will have to remain for the long period of five years before he can vote. Where then is the hardship? But this is not the great question before the Convention. The object which I have in view, in common with my friend from Bastrop, is to extend an act of justice to those who come here in good faith, from whatever clime or soil they may come, before the great political jubilee which is to take place upon the annexation of Texas; to secure to them all the rights and immunities of citizens of the State. So far as our present government is concerned, an individual emigrating from the United States is as much a foreigner in this country, as the man that comes from Europe, or any other part of the world. I will offer an amendment, which, I think, will secure the object.

Mr. Mayfield offered the following amendment, which was accepted by Mr. Caldwell:

And entitled to and enjoy all the rights, immunities and privileges of citizens of this State, under such disabilities as is otherwise provided for in this Constitution and that of the United States.

Mr. Ochiltree said he would ask the clerk to read an abstract from the Picayune, stating that a colony of 15,000 Swiss were about to leave their homes and settle in Texas this fall.

Mr. Caldwell read a statement that about 20,000 souls were about to emigrate from Kentucky and Tennessee this fall, to settle in Texas.

Mr. Evans said: I happen to know districts of country where there are hundreds of voters who have been here six months, and have not been here twelve months. And it strikes me that we are disfranchising hundreds of as good citizens as there are in the Republic. I was willing to adopt the section, provided we should incorporate a clause in the Constitution. I care not where or in what form, saving the right of these citizens, as also of all foreigners now in the country, or who may come in before the acceptance of our Constitution. I have no fear of the difficulties which the gentleman from Nacogdoches seems to anticipate, as resulting from foreign immigration. I have never seen a German, an
Irishman or Scotchman, who was not as good a republican as the gentleman from Nacogdoches, myself, or any body else.

Mr. Armstrong of J., offered the following as a substitute for Mr. Caldwell's additional section:

Every free male person of the age of twenty-one years (Indians not taxed, Africans and descendants of Africans excepted) who were residents in the Republic of Texas on the 4th day of July, 1845, shall be deemed a qualified elector of this state.

He said: My reasons are these:—In the first place, I think the section, as offered by the gentleman from Bastrop, will conflict with the naturalization laws of the U. States. It will entrench and encroach upon the prerogatives and jurisdiction of the U. States Congress. To qualify an individual to vote, is, in my humble conception, one of the powers reserved to that body. With regard to the next point, I think it will be necessary for this House to fix some period from which to date the rights of persons in this country. Then I will ask this house if there will be any hardship to those individuals who have arrived in this country after the 4th of July, 1845. It is well-known that the progress of annexation commenced in the U. States last March. The passage of the resolutions by the Congress of the U. States, was notice to all the world of the pendency of this contract. It was known by all, that any person coming to Texas after that time would risk the rights of citizenship, which he might have expected to acquire. And when we come down to the acceptance of the terms by the Republic of Texas, the contract was certainly then notice to all the world, that from that period emigrants to Texas could not look for any advantage so far as the rights of citizenship are concerned. It was known by all, that the government was now about to change its form, and be merged in that of the U. States: "No one could be surprised, or deprived of any privileges. The people of Texas, when they adopted the resolutions of the Congress of the U. States, did thereby consent to bury their national existence, and so far as the will of the nation was concerned, changed their government, and set about the work of framing a constitution for a state in the confederacy. Any individual coming here after the 4th of July, would come informed of the progress of annexation, and would know what he had to expect. Then, I say, that the 4th of July is a proper time to fix, from which to date the rights of individuals in this country. Individuals coming at this time, are not deprived of any privileges, but come as emigrants to the U. States. But all who have come previously, in good faith, should be provided for. Those who come after the period referred to, come with the intention of perpetrating a fraud upon Texas and the U. States, if they claim citizenship by the act of our reception into the Union. They place themselves in the situation of per-
sofs intending to take advantage of circumstances, instead of having a
claim upon the attention and favor of this convention. It is not necessa-
ry, however, in my opinion, to require any thing of those who come in
good faith while the country had one citizen as an independent govern-
ment, except that they should have been residents of Texas, on the 4th
day of July, 1845. The six months will have elapsed before the action
of the U. States can be had, and they will be citizens, as if they had re-
ained that length of time in the Republic, and had taken the oath of
allegiance.

Mr. Lipscomb moved to amend by striking out 'the 4th of July, 1845,'
and insert 'acceptance of this constitution by the people.'

Lost.

The question was then taken on Mr. Armstrong's substitute and re-
jected.

Mr. Brown offered the following as a substitute for Mr. Caldwell's
additional section:

At the first and all subsequent elections to be held under this consti-
tution, all free male persons (subject to the exceptions, and possessing the
other qualifications required by the foregoing sections) who shall have
emigrated to this Republic prior to the approval of this constitution by
the Congress of the United States, shall be entitled to hold lands and ex-
ercise the right of suffrage.

Which was rejected.

The ayes and noes being called, on the adoption of Mr. Caldwell's
additional section.

Mr. Forbes said: I should be very glad to vote for the principle em-
braced in the first part of the section; but I cannot vote for the latter
part. I shall, therefore, vote no.

The ayes and noes stood as follows:

Ayes—Messrs. President, Anderson, Bache, Burroughs, Caldwell,
Cazneau, Davis, Evans, Everis, Hemphill, Hunter, Jewett, Love,
Lusk, Lipscomb, Mayfield, Miller, Navarro, Power, Van Zandt and
White—21.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bagby,
Brashear, Brown, Cunningham, Cuney, Darnell, Forbes, Gage,
Hicks, Hogg, Jones, Latimer of L., Lewis, Lumpkin, McGowan, Mc-
Neil, Moore, Parker, Rains, Runnels, Scott, Smyth, Standifer, Tar-
ant, Ochiltree, Wright and Young—32.
So the section was rejected.

Mr. Everts offered the following as an additional section to come in after the first section:

All free male persons over the age of twenty-one years (Indians not taxed, Africans and descendants of Africans excepted) who shall have resided six months in Texas before the acceptance of this constitution by the Congress of the U. S. shall be deemed qualified electors.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the additional section offered by Mr. Everts.

The ayes and noes being called, stood as follows:


So the additional section was adopted.

On motion of Mr. Wright, the article on the legislative department was ordered to be engrossed for a third reading.

On motion of Mr. Everts, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment—roll called—quorum present.

On motion of Mr. Darnell, the Convention took up the special report of the committee on the legislative department, to whom was referred an additional section to come in after the 6th section of the General Provisions.

The question then was upon the adoption of the following proviso, as reported by the committee:

Provided, that nothing in this section shall be so construed as to effect the claims of persons; against the Republic heretofore existing.

Which was adopted.
The section as amended was then adopted.

The report of the judiciary committee on the 18th section of the judiciary department, together with the substitute offered by a majority of said committee in three sections, and the substitute of the minority was then taken up.

The substitute of the minority of the committee being before the Convention,

Mr. Armstrong said: Taking into consideration the difficulties attending the subject, the minority of the committee feared that the section offered might defeat itself; and instead of becoming a perfect rule of action, might become a mere rule of contradiction, calculated to become odious and to work a great deal of injury. I am in favor of a community of property, provided we were able to adopt it here in its perfection, and to give the man and wife equal rights. I would have voted for the section first recommended by the report of the committee on General Provisions, because it was so shaped as to leave it to the Legislature to establish the system, only requiring it to be done upon the principle of a community of property. It took up the policy alone which was to be attained, and left all the minutes to the Legislature. I object to the one just read, among other reasons, because it refers to the law of the country, whereas the principle which it is intended to perpetuate, should have been incorporated without reference to any statute. It differs from either the civil code of Louisiana, the civil laws of Spain, or the common law, or any rule which I know anything about. I do not believe there can be a system built up by it which will do perfect justice. The section offered by the minority secures the right of married women beyond all possibility of a doubt. It protects the wife's property which she brings into the marriage, and that which she obtains by gift, devise or descent during the marriage, and afterwards secures to her one-third of all the property. This is better than the law referred to, reserving to her her lands and slaves. I am also opposed to the section proposed, because we have already adopted in the General Provisions a section which reserves so much property from execution or forced sale. If all this is not sufficient to secure the rights of woman, I am not able to tell what is, unless we attempt to legislate upon the subject in detail.

Mr. Hemphill said: If the report of the minority be adopted, the effect will be to make an essential change in our laws, with regard to marital rights. Under the provisions of our present laws, the lands and slaves, owned by either party before marriage, or acquired afterwards by gift, devise or descent, continue the separate property of the husband or wife, as the case may be, while all other property, whether owned before or acquired after marriage, is made common property, to support the expenses, and be applicable to the use, benefit and purposes of the
conjugal partnership. The first portion of the section introduced by the minority, enlarges the rights of the wife, in relation to her separate property to the extent in which they were enjoyed before the introduction of the common law—but it avoids all allusion to the property held in common by the husband and wife, or the recognition even indirectly of the existence of community property, under the laws of Spain, in force in this republic until 1840, all the property of every description, owned by either party before marriage, or acquired afterwards by lucrative title, remained the separate property of the partners respectively. But under that system of laws, provision was made for the application of certain portions of the separate property of both husband and wife, together with all the property acquired after marriage, by onerous title to the support of the marriage. The date, on the part of the wife, and the arras by the husband, were intended for the purpose. A material alteration was effected in the rights and property of husband and wife by the law of 1840, regarding marital rights. The parties may now, if they think proper, enter into ante-nuptial stipulation. They may for instance change any portion of their respective properties for the use of the community—but should they fail or decline to do so, the law itself renders all that property (except lands and slaves) which formerly belonged to the partners separately, liable for the maintenance, uses and debts of the marriage. The object of the majority—the effect of the provisions introduced in their report, is to make no alteration in the respective proportions of separate and community property. The law in that respect, as it now exists, is quite satisfactory. If a change be desirable, the one recommended by the minority is highly objectionable, as it does not contemplate, or at least recognize, the existence of any common property. That the convention might fully understand the law now in force on the subject, and the effects resulting from the adoption of either of the sections reported by the majority or the one offered by the minority of the committee.

Mr. Hemphill proceeded to read and comment on the third and fourth sections of the act to adopt the common law of England to repeal certain Mexican laws, and to regulate the marital rights of parties, approved 20th January, 1840. He then contended that by the adoption of the sections recommended by the majority, the interests of the husband would not suffer, while the condition of the wife would be ameliorated, and her rights ascertained and secured. Under the common law, the husband and wife are but one person; the very being as legal existence of the woman is suspended during marriage. By our law, they are considered distinct persons, at least so far as their estates or property are concerned. This essential distinction in the condition of the parties in the conjugal relation is derived to us from the Spanish law, in which ample provision was made for every relation or contingency by which the property of the matrimonial partnership could be affected. This system has been abolished, and all the regulations pertaining to the subject, have been swept off.
The chasm has not yet been supplied by laws sufficiently minute in
detail to embrace all the incidents requiring control—and one of the
objects of the majority of the committee is to enjoin it upon the legisla-
ture to supply the deficiency by the passage of the necessary laws, so
that the rights, duties and obligations of both husband and wife, in rela-
tion to their property, may be clearly defined and established.

Let them, for instance, establish, with more precision, the power of
the husband over the property of the wife. By our present law the hus-
band has the sole management of the lands and slaves of the wife. True,
he is bound to support the wife and her children from the proceeds of her
lands and slaves. But in case where the property which is held in
common, furnishes the most ample reasons for the support and education
of the family, the husband might now apply the whole proceeds of the
wife's property to the improvement of his separate estate, or to any other
purpose for his exclusive benefit. The disposition of the proceeds of
the wife's estate should, to some extent at least, be regulated by law.—
The husband should not have such absolute control as to enable him to
seriously injure or destroy the estate of the wife by wasteful expendi-
ture or fraudulent mismanagement. Under certain circumstances, to be
pointed out by law, she should have the power of controlling her own
property or of appointing a trustee for that purpose. Under the common
law, where property is settled in trust for the use of the wife, it is rarely
the case that the husband is selected as trustee, or permitted to control
the estate. There are only instances of the many circumstances which
will constantly arise in relation to marital rights, that have not been pro-
vided for, but for which an adequate remedy should be afforded.

The section offered by the majority also provides that where the sur-
vivor of the marriage is in necessitous circumstances, a suitable provi-
sion shall be made for his or her relief out of the estate of the deceased.
Under the Spanish laws, a widow having no property of her own, and
there being no community property, was entitled to one-fourth part of
the estate of her deceased husband.

This beneficent provision perished amidst the wreck of the old sys-
tem, and no substitute has as yet appeared in our legislation.

Adverting, for a moment, to the latter part of the first section, offered
by the minority, I cannot consider the immuring of the one-third part of
the husband's property, including the homestead to the widow during
widowhood, so beneficial to the wife as the existing regulations on the
subject. By law, she is now entitled to one half of the community prop-
erty forever—under the provision of the minority, she would enjoy
the use of only one third of her husband's estate, which all might be
what is now termed community property—not forever, nor even for
life—but only during widowhood. If inducements be not offered by le-
gislative action to embrace the third honored conditions of matrimony—
the gentler sex, at least, should not be deferred by menaces of poverty
and destitution from entering a union, sanctioned by reason and reli-
gion, and productive of the highest earthly felicity. — Provisions made by tyrannical husbands in their last wills — extending their capricious despotism beyond the grave — limiting portions to their widows during their widowhood, have ever been regarded as most ungracious. In no community or country do they find favor, and I hope that they will not find an exemplar in the constitution or laws of Texas.

Returning to the report of the majority of the committee in relation to the second section offered, that all its objects have been secured by existing laws, and that all laws now in force will continue in force until repealed. It is true, that this section is but an affirmation of the existing laws. But these provisions are of such high importance that they are deemed worthy of constitutional sanction, and to be placed beyond the effects of caprice, and the mutability of opinion. The convention will doubtless agree in the propriety and importance of the provision for the registration of the wife’s separate property. Under what penalties this duty should be enforced, it will be for the wisdom of the legislature to determine. Some means should be afforded, by which the condition of property under a person’s control may be ascertained by creditors, and all persons with whom he has business relations.

I anxiously hope that some provision may be adopted by the convention by which the rights of the wife will be shielded under the immunities of the constitution. Should our present law be repealed, and the common law have effect, all slaves, money and every other species of property, lands excepted, which the wife brings with the marriage, or acquires thereafter, become the sole and absolute property of the husband. The whole may be absorbed in the payment of his debts before marriage; may be lost in speculations or at the gaming table, may be wasted and entirely destroyed, or may be given away in the presence of his deserted and beggared wife, to the most unworthy wretches, with the most complete impunity, without responsibility and without impediment interposed, or remedy afforded by law.

If these sections be adopted and carried out by the legislature, the property of the wife cannot be wasted by prodigality or fraud. The work of destruction would be stayed by the strong arm of the law; or if the damages were effected, the most ample means for the redress of the wrongs and injuries, would be supplied.

Mr. Young moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the 18th section of the report on the judiciary department,

The ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Bache, Bagby, Cazneau, Cuney, Darnell, Everts, Forbes, Gage, Hicks,


So the section was adopted.

Mr. Hemphill said he trusted some one would move a reconsideration.

Mr. Everts said: I hope the vote will not be reconsidered. I understand the law, as it is to be this: that all property in lands or slaves, possessed by either party before the marriage, shall be and remain the separate property of the party; that all that the husband has remains his, and all that the wife has or may acquire by gift, devise or descent, during the marriage, still remains her property, and does not go into the community property, but belongs to her as much as if she were not married; and her paraphernalia belong to her. All the property then which may be acquired by the husband by purchase during the coverture belongs to the husband and wife, and is the common property of both of them. Then at the death of the husband, if she had lands and slaves before marriage, they are hers, and remain untouched. If, during the coverture he obtained land by purchase, one-half belongs to the wife, and all personal property being common property, she has one-half of that after the debts are paid. I believe that I am correct in these positions.

This law then is still in force: it is not touched at all by the passage of the 18th section, and will remain in force forever, or until it shall be repealed by a future Legislature. The section leaves the subject precisely where it finds it, with the exception of authorizing the Legislature to pass an act defining the rights of married women upon the principle of a community property. Then the law is imperative that the wife shall have some of the property acquired by the husband during the coverture by purchase. The law as it now stands does not alter the common law upon the subject of the lands of the wife; only as the common law does not recognize slave property, the statute comes in and places slaves upon the same footing. I do not see any great necessity for changing the law on this subject. It does seem to me to be favorable enough to the wife. I know a case of this kind. A man married a second time, in Texas; purchased 2,500 or 3,000 acres of land, and acquired a handsome personal property. He died, leaving a young widow, some twenty-two or twenty-three years of age, who brought nothing into the marriage but her clothes. Upon his death, she got one-half of the real estate, and one half of the personal property after the debts were paid; and the balance was divided between six or seven chil
dren. Thus his children were rendered almost beggars, while she was made comparatively rich. Hundreds of such instances, no doubt, might be pointed to. The law as it now stands is favorable enough in all conscience for the widow. And the 18th section as it stands does not repeal the law. It only compels the Legislature to define the rights of married women as they may think proper upon the principle of a community of property. Mr. President, we are, as I conceive, emphatically a common law people. It is true the civil law was in force here in the earlier settlement of the country; but the present population was raised and educated under the common law. The laws relating to distribution and descents are generally alike throughout the Union, excepting Louisiana, where the civil law was retained on account of the first settlers being a foreign population of French and Spanish descent. I think, sir, that some little respect should be entertained by this Convention for the opinions of those who may come to this country hereafter from the U. States.

Mr. Lipscomb said he believed it was the intention, and he for one had intended, to change the common law upon this subject. He would prefer striking out the section to leaving the law as it now stands, and leaving the Legislature untrammelled. If the Convention adopted this section, it would be considered as calling upon the Legislature to put the separate property of the wife in a position to be subject to the payment of the husband's debts, and to the consequences of his misfortune or ill conduct.

Mr. Rusk said: I voted for the section, because I do not like to see the system which prevails in Louisiana adopted here. The laws excluding a certain amount of property from forced sale are sufficient to secure a man's family from want. I am willing to protect women, but the system of legislation proposed would be doing it with a vengeance. The common law, in my opinion, does not sufficiently guard the rights of women; while the civil law, according to my conceptions, runs to another extreme. The report of the committee on the judiciary is not perhaps very exceptionable. I would prefer, however, to leave the subject to the Legislature.

Mr. Van Zandt said: He believed himself that it would be best to strike out the whole section, and leave the matter to the Legislature. There seemed to be some difficulty in fixing upon any plan here which would meet the views of all. It would be difficult to amend the Constitution hereafter, and lest something should be introduced which would operate injuriously, he would vote to strike out the whole section.

Mr. Davis said: I am extremely anxious to see a provision inserted in our Constitution, which will secure to the wife the property which
she brings into the marriage state. I can see no injustice in it. The gentleman from Nacogdoches says he is perfectly willing to exclude from forced sale so much property as will make every family comfortable, if the gentleman is sincerely desirous to make the wife comfortable, why will he not secure her the property she may have brought in? Why not secure to the daughter a sufficient amount of property to relieve her from the drudgery of the wash tub, to which the vices or improvidence of her husband may reduce her? The days have passed away when women were beasts of burden, and as intelligence increases they will be placed upon the high and elevated ground which rightfully belongs to them. And it is the opinion of the age, that women should be protected in their property. We are told, that in the State of Louisiana females own two or three hundred negroes, while their husbands are in debt to the amount of thousands of dollars. Well, sir, where is the injustice, if the property belongs to the female? The creditors were apprised of the situation of the property; they knew that it could not be taken to pay his debts; and the credit was not given upon the faith of the property. Then, sir, would equity and justice demand that it should be taken for the payment of his debts? No, sir. I do hope and believe that there is a disposition on the part of this Convention at least to secure to the female the property which she may bring into the marriage state. I am, therefore, in hopes that the section will not be stricken out.

Mr. Wright said: This seems to be a complicated matter, and one which it is difficult to settle. There seems to me almost as many different views as there are persons. I look upon the rights of married persons as precisely the same in their character as those of persons associated in a firm of co-partnership, and in my view, all property put into the common stock should be subject and liable for all debts contracted by the joint partners during the term of the co-partnership. I think justice and equity demand it. And I do not think we should exempt either party in this case more than in the other. I am willing to go as far as any man in giving protection and comfort to the female; but beyond this I am unwilling to go. And if debts are contracted by the firm for the interest of the firm, I want the property liable so far as the common stock goes originally. I do not see the justice of screening one partner where both are equally benefited.

Mr. Darnell said: At an early period, I introduced a resolution in relation to what I conceive to be an important question; I introduced it with a view of ascertaining whether or not it would be proper to insert a clause in the Constitution, guarding the rights of the female portion of the community. Now, sir, is it proper that women should be protected; that they should have their rights guarantied to them by the laws of the State? If so, it would surely be proper and best to place
such a provision in this fundamental law. As regards the remarks of
the gentleman from Red River, to the effect that marriage should be
viewed as a co-partnership, they cannot apply. For in that case pro-
tection is afforded to each party. But how is it in marriage, where the
female takes the male for better or for worse, and risks the consequen-
tes? Can any injury result to creditors from the adoption of the prin-
ciple of community of property? Is it in contemplation to give this pro-
vision a retrospective bearing? No, sir; it is prospective in its opera-
tion. Where is the injury to come from? Does not the creditor know
the situation of the property at the time of extending the credit? If he
acts unadvisedly, it is his own folly. Who are the parties to be benefit-
ed by a provision of this kind? Is it not the weaker portion of the com-
unity, who have no voice in choosing those who are to rule over
them? And why do you wish to give this question the go-by, and
leave it to future legislation? We might have a Legislature who would
be inclined to disregard the rights and privileges of the weaker sex, and
to reject any proposition for its protection, looking, Shylock like, with
an eye single to the little means they could put in their own pockets.
What has been the fate of legislation upon this subject? It has not been
attempted. In what state are our laws now? There is not a lawyer
in Texas who can define marital rights; they do not know them, and
they cannot know them. The Legislature at one session will pass a
law defining the rights of married women; the next will place them up-
on a different footing; the next will change them again; and the next
will repeal every thing in relation to the subject. Sir, the Comvention
should place this matter beyond the danger of fluctuation. Justice and
equity call upon us to take some action upon it here. The wife must
now sit weeping by, and see the whole of her property wasted in mid-
night frolics by a drunken or gambling husband; for she has no power
to arrest it. Is not one instance of this kind worth a thousand of your
Shylock cases? Under the common law system the wife may be strip-
pered of every thing. She and her offspring are made miserable, and no
one is benefited. For, sir, an individual may be in debt to an amount
less than half the value of his property, and when it is put up and sold
one half may not be paid. By the system proposed, the creditor cannot
be injured, and families will be protected. If it is right and proper that
they should have their rights guarantied to them, in such a manner that
it will be beyond the power of the Legislature to take them away, then
this Convention should adopt such a provision. If it is not right, then
I say pass it by.

Mr. Armstrong (with leave) said: I am certainly aware of the fact
that individual cases now and then arise, of a character to elicit the com-
passion of every feeling heart. Yet I am satisfied that in rejecting the
system proposed, we do not adopt the common law; we do not adopt any
system, but leave the subject to the Legislature. And here I would
call the attention of gentlemen to the fact, that the Legislature has made but one innovation with regard to the rights of man and wife; and that was in 1840. The gentleman bases his argument upon the supposition that the Legislature will be composed of corrupt and iron-hearted men; when in truth experience has shown that there is more gallantry in this age, than there ever has been at any period in the history of the world. According to the gentleman from Liberty, the age is going on improving, and the State of Louisiana has gone far beyond all other countries. Why, sir, there, instead of the man's making a beast of the wife, the man is the beast of the woman; for he cannot buy himself a shirt without the order of the wife; and he is a beggar on his own plantation. She can kick him out of the house at any time, under the system advocated by gentlemen here.

On motion of Mr. Darnell, the vote was re-considered.

On motion of Mr. Hunter, the vote adopting the previous question was reconsidered.

On motion of Mr. Rusk (Mr. Lewis in the chair) the section and substitute were referred to a special committee.

The President then announced the following special committee: Messrs. Darnell, Davis, Hemphill and Runnells, and on motion, the President was added to said special committee.

On motion of Mr. Wright, the Convention adjourned until half-past 8 o'clock, Monday morning.

Monday morning, August 18, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment and was opened with prayer by the Chaplain.

Messrs. Burroughs and Parker were excused from attendance in consequence of sickness.

Mr. Gage offered the following resolution:

Resolved, That the members of this Convention shall not be entitled to per diem pay for services performed in this Convention after Thursday, 21st inst.

Which was laid on the table one day for consideration.