

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Debates of the Texas Convention. Wm. F. Weeks, Reporter. Houston: Published by J.W. Cruger, 1846.*

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to rarebooks@law.utexas.edu.

If you are uncertain whether you need permission to use these materials, please contact us at rarebooks@law.utexas.edu.

Be it further resolved, That John G. Chambers, having received the second highest number of votes polled in said county, for deputies, is entitled to a seat in this Convention.

Which report and resolutions, together with the report of the majority of the committee, were taken up.

Mr. Parker moved to refer them to the Committee on the Judiciary. Lost.

On motion of Mr. Van Zandt, the House went into committee of the whole—Mr. Baylor in the chair. After a short time spent therein, the committee rose, reported progress, and asked to be discharged from further consideration of the subject. Adopted.

The question being the adoption of the counter report,

On motion of Mr. Forbes, a call of the House was ordered.

On motion of Mr. Van Zandt, the call was suspended.

Mr. Gage offered the following amendment to the resolution offered by Mr. Evans.

Be it further resolved, That the county of Rusk be allowed two deputies in this Convention—one in addition to the one now occupying a seat in this body. Rejected.

The Ayes and noes being called on the adoption of the report and resolutions of Mr. Evans, stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Brown, Cazneau, Clark, Evans, Everts, Hemphill, Holland, Jewett, Latimer of L., Latimer of R., R., Mayfield, Standifer, Tarrant, Van Zandt, Wright and Young—18.

Noes—Messrs. President, Armstrong of J., Baylor, Bache, Bashgar, Caldwell, Cuney, Darnell, Forbes, Gage, Henderson, Hogg, Harton, Howard, Hunter, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Smyth, Ochiltree, White and Wood—33.

So the report and resolutions were rejected.

On motion of Mr. Mayfield, the report of the majority of the committee was laid on the table.

On motion of Mr. Kinney, the Convention adjourned until to-morrow morning, 9 o'clock.

Saturday, July 12th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The President announced the select committee contemplated by the resolution of Mr. Mayfield, of Thursday last, enquiring into the expediency of ceding to the United States certain lands on the western and

south western frontier, for military purposes, &c. Committee consisted of Messrs. Mayfield, Love, Runnels, Hemphill, Cazneau, Tarrant and Anderson.

The committee on Privileges and Elections made the following report:

Committee Room, July 9, 1845.

*To the Honorable
the President of the Convention:*

Your committee to whom was referred the petition of Horace Burnham, praying that he may be admitted to a seat in this Convention, as a delegate from the settlements adjacent to the three forks of the Trinity, have had the same under consideration, and ask leave to make the following report: From the evidence before the committee, they have ascertained that the constituents of the memorialist are resident citizens of the adjacent counties of Nacogdoches and Robertson; that the said counties of Nacogdoches and Robertson being already duly represented in the Convention, the prayer of the memorialist should not be granted.

Your committee therefore recommend the adoption of the following resolution:

Resolved by the Convention, That the counties of Nacogdoches and Robertson being already duly represented in this body, the memorialist is not entitled to a seat as a delegate in this Convention.

J. B. MILLER, Chairman.

Report laid on the table, to come up among the orders of the day.

Mr. Hemphill, chairman of the committee on the Judiciary, made the following report:

Committee Room, Austin, July 11, 1845.

*To the Hon. THOS. J. RUSK,
President of the Convention:*

The committee to whom was referred the Judiciary Department of the Government, respectfully report that they have had the same under consideration, and recommend the following provisions to be incorporated in the Constitution.

JOHN HEMPHILL,
Chairman of the Judiciary Committee.

Sec. 1. The Judicial power of this State shall be vested in one Supreme Court, in District Courts, and in such inferior Courts as the Legislature may, from time, ordain and establish, and such jurisdiction may be vested in corporation courts as may be deemed necessary and be directed by law.

Sec. 2. The Supreme Court shall consist of a Chief Justice and two associates, any two of whom shall form a quorum.

Sec. 3. The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State, and the Supreme Court and Judges thereof shall have power to issue Writs of Injunction, Mandamuses, Quo-Warrants, Habeas Corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control over the District Courts, and shall hold its sessions once every year, between the months of October and June, inclusive, at not more than three places in the State.

Sec. 4. The Supreme Court shall appoint its own clerks, who shall hold their offices for four years, and be subject to removal by the said Court for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

Sec. 5. The Governor shall nominate, and by and with the consent of two-thirds of the Senate, shall appoint the Judges of the Supreme and District Courts.

Sec. 6. The Judges of the Supreme Court, first appointed under this Constitution, shall hold their offices for four years; and all vacancies which may occur during that period shall be filled for the remainder of the term. The Judges appointed immediately after the expiration of the said term, and to fill all subsequent vacancies, shall hold their offices for seven years.

Sec. 7. The Judges of the District Courts first appointed under this Constitution, shall hold their offices for three years, and all vacancies which may occur during that period, shall be filled for only the remainder of the term. The Judges of the District Courts, appointed immediately after the expiration of said term, and to fill all subsequent vacancies, shall hold their offices for six years.

Sec. 8. The State shall be divided into convenient Judicial Districts, (and each District shall not contain more than seven counties.) For each District there shall be appointed a Judge, who shall reside in the same, and hold the courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law.

Sec. 9. The Judges of the Supreme Court shall receive a salary not less than _____ dollars annually, and the Judges of the District Courts a salary not less than _____ dollars annually, and the salaries of the Judges shall not be diminished during their continuance in office.

Sec. 10. All Judges of the Supreme and District Courts shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas;" all prosecutions shall be carried on in the name and by the authority of the State of Texas, and conclude against the peace and dignity of the same.

Sec. 11. The District Courts shall have original jurisdiction in all criminal cases, and in all civil cases when the matter in controversy

amounts to one hundred dollars; and the said courts and judges thereof shall have power to issue all remedial and original writs that may be necessary to give them a general superintendence and control over inferior jurisdictions.

Sec. 12. The Governor shall nominate, and by and with the advice and consent of two-thirds of the Senate, appoint an Attorney General, who shall hold his office for _____ years, and a District Attorney for each District, who shall hold their offices for two years, and the duties, salaries and perquisites of the Attorney General and District Attorney shall be prescribed by law.

Sec. 13. There shall be appointed for each county a convenient number of Justices of the Peace, one Sheriff, one Coroner, and a sufficient number of Constables, who shall hold their offices for two years, to be elected by the qualified voters of the District or county, as the Legislature may direct; Justices of the Peace, Sheriff and Coroner shall be commissioned by the Governor.

Sec. 14. No Judge shall sit in a case where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or where he shall have been of counsel in the cause. When all or any of the Supreme Court shall be thus disqualified, the Court shall certify the same to the Governor of the State, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of the said case; when the Judges of the District Courts are thus disqualified, the parties may, by consent, appoint a proper person to try the said case: and the Judges of the said Courts may exchange Districts, or hold courts for each other, when they may deem it expedient, and shall do so when directed by law. The disqualifications of Judges of inferior tribunals shall be remedied as may hereafter be by law prescribed.

Sec. 15. Inferior tribunals shall be established in each county, for appointing guardians, granting letters testamentary and of administration, for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and the District Court shall have original and appellate jurisdiction and general control over the said inferior tribunals, and over executors, administrators, guardians and minors.

On motion, 500 copies of the report and articles were ordered to be printed.

Mr. Evans made the following counter report:—

*To the Honorable
the President of the Convention:*

The undersigned begs leave to state that he dissents in many respects from the majority of the committee on the Judiciary, and that he will

be ready in due time to lay before the Convention his own views in relation thereto.

L. D. EVANS.

Mr. Jewett offered the following resolution :

Resolved, That the committee on the General Provisions of the Constitution be instructed to enquire into the expediency of suspending the colonization contracts made by the President of Texas, by guaranteeing to the colonists actually settled in conformity to the contracts, their rights to land, and authorising the contractors to institute suits against the State for the recovery of any indemnity to which they may be equitably entitled.

On motion of Mr. Jewett, the rule requiring the resolution to lay on the table for one day, was suspended, and the resolution adopted.

Mr. Cuney offered the following resolution :

Resolved, That the House of Representatives of the first Legislature of the State of Texas, shall consist of sixty-one members, and that for every three Representatives there shall be one Senator, to be appointed in this ratio as nearly equal as may be among the several counties of the Republic.

Which resolution was read and laid on the table one day for consideration.

On motion of Mr. Lipscomb, Mr. Forbes was added to the committee on Printing.

The resolution of yesterday, for the appointment of an additional Clerk to the Convention, was taken up and adopted. Mr. Ochiltree nominated H. P. Bee. Mr. Caldwell, Alfred Luckett; and Mr. Mayfield, Joseph Waples. Mr. H. P. Bee having received upon a second balloting, a majority of all the votes, was declared duly elected.

Mr. Ochiltree moved that the Convention proceed to the election of a Reporter.

Mr. Van Zandt moved that a committee of three be appointed to enquire into the propriety of electing a Reporter for this body. Carried.

The President appointed Messrs. Ochiltree, Cazneau and Van Zandt, said committee; who reported that it was expedient that the Convention go immediately into said election.

On motion of Mr. Ochiltree, the rule requiring resolutions to lay on the table one day for consideration, was suspended, and the ayes and noes being called for on the adaption of the report, stood as follows :

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Brashear, Brown, Caldwell, Cazneau, Clark, Cuney, Darnell, Forbes Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Latimer of L, Lewis, Love, Lumpkin, Mayfield, McGowan, Miller, Moore, Navarro, Rannels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Wright—38.

Noes—Messrs. Bache, Cunningham, Evans, Everts, Gage, Hunter, Latimer of R. R., Lusk, Lipscomb, M'Neill, Parker, Power, Rains, Scott, White, Wood and Young—17.

So the report was adopted. Whereupon the Convention proceeded to the election of a Reporter. Mr. Hemphill nominated Mr. Wm. F. Weeks; and there being no other nomination, and no objections being made, Mr. Weeks was declared duly elected Reporter for the Convention.

On motion of Mr. Cuney, the report of the committee on Privileges and Elections, upon the application of John G. Chambers, of Bowie county, was taken up.

Mr. Darnell moved to re-commit the report to the same committee.

Mr. Wright moved to amend so as to read "that he is not entitled to his seat under the rule of the House."

Mr. Latimer of L. moved to refer the report to a select committee of five. Lost.

Mr. Latimer, of Lamar, said: I should like, Mr. President, in a few words to explain the reasons which induce me to vote against the adoption of the report: although I had intended simply to cast a silent vote, that the time of this House might not be consumed in useless and unnecessary discussion. I shall vote against it, sir, because I believe if that report is adopted, that more than three hundred freemen of the county of Bowie will be disfranchised: citizens who have as good a right to a representation upon this floor, as those of any other portion of the Republic. What are the circumstances of the case? Does not the President in his proclamation say that every county voting three hundred shall be entitled to two Delegates in this Convention? From the evidence here before you, is it not clearly and unequivocally manifest that Bowie county at the last Presidential election did vote upwards of three hundred votes? If such be the fact, there is but one matter for your consideration: is Mr. Chambers entitled to his seat here as a Delegate from Bowie county? Gentlemen may tell you that if the report is rejected, you will open the door to confusion, that you will establish a bad precedent. Precedents I care not for; I go for justice, and if the claimants from any other county in the Republic can make out as plain a case, I will vote for them. If the people of Bowie county have rights, they should be asserted here: and surely those three hundred voters are as well entitled to two Delegates upon this floor, as the people of any county which is fully represented. There is no analogy between the claims of this and the other counties referred to. It was not proved that Sabine voted three hundred votes: with regard to Galveston it was only stated that the county could have polled six hundred votes, but for the pestilential disease under which it was suffering at the very time of the election, and which prevented numbers from turning out. Here we

have the evidence before us that the people did turn out, and that they voted over three hundred. As a matter of sheer justice, as well to Mr. Chambers as to Bowie county, I trust the Convention will grant him his seat.

Amendment adopted; and the report as amended adopted.

Mr. Tarrant offered the following preamble and resolution:

Whereas, the Chief Justice of Bowie county having issued writs of election, for the election of an additional Delegate from said county, and John G. Chambers having received the second highest number of votes polled in said election for Delegates, and having in compliance with the wishes of the voters of Bowie county, attended upon the Convention to obtain a seat as a deputy from said county, Therefore,

Be it Resolved, That the said John G. Chambers is entitled to receive and draw mileage at the same rate as the members of this Convention, to be drawn from the fund appropriated by the last Session of Congress to defray the expenses of this Convention.

Which resolution was read and laid on the table one day for consideration.

Mr. Mayfield's resolution of Friday requiring the committee on Education to enquire into the expediency of setting apart a portion of the annual revenue of the State for the support of common schools, &c., was taken up and adopted.

Mr. Parker's resolution of yesterday, requiring the committee on the Judiciary to take into consideration the propriety of incorporating a provision in our State Constitution, securing to the State the right of adjudicating the land titles of the same, &c., was taken up.

Mr. Parker, in support of the resolution, made the following remarks:

Before the question is taken, Mr. President, it would be proper perhaps to explain my object in introducing this resolution. I have not proposed it with the expectation that the provisions suggested will be incorporated into the Constitution in the very terms there set forth. But my object was simply to call the attention of the Judiciary committee to this point. The subject of the adjudication of land titles in Texas is one in which the people of this country feel as deep an interest as in any other whatever. It is well known to every gentleman upon this floor that there has been some opposition in some parts of the country to the annexation of Texas to the United States. Those spirits, Mr. Speaker, who have been opposed to that great measure are now sleeping. Public opinion has settled the question, and they now have nothing to say. But I venture to assert, Mr. President, that so soon as this Convention shall have finished their labors, and perfected the Constitution now under conside-

ration, those individuals will be heard. Your Constitution, it is anticipated, is to be referred to the people for their adoption or rejection. Then the slumbering opponents of annexation will arouse themselves, and they will roar. They will pick up your Constitution and disfigure it; they will mark every dark spot upon it. And what subject has ever agitated the people of Texas like that of the adjudication of land titles? All the people are not lawyers; they do not understand the principles upon which their titles are predicated, upon which they are hereafter to be decided. The people, sir, or a portion of them at least, including many of the best of our citizens, many who have fought the battles of their country, are under the impression, that unless some provisions are incorporated in this Constitution, securing to them the right of having their land claims adjudicated here, when we go into the United States, the laws of Texas in relation to the subject will be disregarded; that their titles will be decided in accordance with precedents, with decisions long since made in the courts of that government. Is it not manifest, then, what a powerful club may be placed in the hands of those hostile to annexation, without some action upon the subject? It is then for the purpose of quieting the public mind, of showing the people the true position in which their land claims will stand in the event of annexation, that I wish to call the attention of the Judiciary committee to this point, and to obtain from that committee a report explaining the principles which govern the subject, a report setting forth the facts as they are, which may tend to quiet the minds of our citizens, and take a powerful weapon out of the hands of the enemies of annexation, in order that we may have the same unanimity among the people, when the vote comes to be taken upon the adoption of the Constitution, as has been evinced on the part of our Congress, and in the counsels of this Convention. I wish to obtain a report from the Judiciary committee: it is the proper one, able and capable. That report I wish to see published and sent abroad among the citizens of the country, that they may be prepared to vote knowingly. I leave the resolution with the Convention; you may put it down, or refer it.

Mr. *Evans*, of Fannin, said: I rise, Mr. President, for the purpose of offering an amendment. The danger to be apprehended, as I conceive, is not from the appellate, but from the original jurisdiction of the United States Superior courts. There are some able lawyers upon the Judiciary committee, who have practised in the United States courts, and are well acquainted with the subject. A large portion of our citizens, however, do not know the extent of the jurisdiction of those courts. It is therefore due, not only the gentleman who made the motion, but the community at large, that our citizens should be informed of the precise extent of the jurisdiction of the courts of the United States over their land claims. The resolution does not go far enough. I wish therefore to amend it in such a manner that the committee may report the precise

jurisdiction of the United States courts over the whole question, and if it is competent to Texas to deprive the Supreme court of its jurisdiction.

Mr. *Parker* said he had reflected upon that point, but feared that the Judiciary committee had not within their reach the books necessary to make a full report upon the subject; though satisfied that they would make it as full as they should be able to do.

Mr. *Henderson* said: I am at all times, Mr. President, as much disposed as any one, to extend the proper courtesy to a fellow member; but at the same time, when acting upon a subject of this sort, I must satisfy myself that such extension of courtesy does not place me in an absurd position. What is the inquiry proposed to be made? It is proposed that this Convention assembled here in Texas shall inquire into the expediency of altering—what? The laws or constitution of Texas? No, sir; but those of the United States. That is the question now presented for the consideration of this body. I would ask gentlemen if we are not here for the purpose of framing a Constitution to be presented to the United States, such as will be acceptable to the people of Texas and of that country? And shall we for a moment inquire into the expediency of introducing a clause even limiting the jurisdiction of their courts? Is there any one who is not satisfied that we lack the power to do so? Is there any one who cannot perceive the bearing which even the inquiry proposed would have upon our interests when we come to present our Constitution before the Congress of the U. States? I, sir, would be perhaps as much prejudiced against a certain species of claims, and as ready to give expression to my antipathy, as any other gentleman upon this floor. But does this feeling warrant me, when called here to perform a solemn duty, to vote upon a momentous question, does this authorize me, sir, even supposing it in our power, to take away any power from one tribunal, and transfer it to another; tribunals that we have no control over; or even to suggest the expediency of instituting an inquiry upon the subject, an inquiry which, resulting in one way, would as certainly defeat the great measure of annexation, as that we are assembled in this house to-day? Where then the necessity of this action? I am willing to extend the rule as far as may seem consistent with common sense. But when a proposition is made so manifestly absurd, one which would present me and the Convention of which I am a member in such a light before the Congress of the United States, then I must say, as one man, that courtesy has its limits. Can the gentleman call upon me by any rule of courtesy, to give up my opinion upon a matter of this sort, an opinion so fixed, so determined, so unalterable, and enter upon an inquiry which I would be ashamed of? Can he ask me for a moment to support him in this proposition, when he must see that the very investigation would create prejudices

in the minds of those who are already only too much disposed to oppose us in the United States? I have, for a similar reason, upon another occasion opposed an inquiry into a matter less objectionable than this. In what position would this action place us? It is at last but an investigation of the question, whether it is expedient for this Convention, composed of Delegates from all parts of Texas, to undertake an alteration of the Constitution of the U. States; or to take away or limit the jurisdiction of the courts established in that country. I have come here but for one purpose; that of making a Constitution which will guard the rights of the people of Texas. I have come here to aid in making an instrument which I hope will be acceptable to the people of Texas, and to the government of the United States; and when a measure of this sort, so absurd in its very nature is proposed for my sanction, I feel myself bound to vote against it. It is not that I have any disposition to oppose fair inquiry upon all these matters; not that I would close the door upon evidence, or stifle investigation. But I am disposed to leave this subject with the powers which have the control over it, as they have the control over other matters similarly situated, after we become a portion of the American Union. If they have it, the Republic of Texas does not wish any investigation of this kind. Had I questions involved that I wished to be settled upon principles that are pure, honest and just, and had I to choose my tribunal, I would choose that pure and unsullied one which gentlemen desire to deprive of jurisdiction in the case under consideration. Who that has a claim which he conceives just, or one that involves principles of difficulty, would for a moment hesitate to submit it to the courts of the United States? If we adopt the course contemplated by the resolution under consideration, it will prove to the world that we set up dishonest claims which we are unwilling to submit to the judgment of the U. S. courts. Why undertake to limit the jurisdiction of the most enlightened tribunal which exists in America, if not in the world?

Will gentlemen insist for a moment upon an inquiry so palpably, totally and entirely absurd? Is it for the purpose of enlightening the minds of this Convention? Is it for the purpose of saying to the Congress and people of the United States, that they have not wisdom enough to know the rules which govern them, and what jurisdiction should be given to their courts? Or is it for some other purpose? Is it for the purpose of saying to that portion of the people of Texas who have evinced a feeling opposed to that of a large majority of their fellow citizens, that we are disposed to regard that feeling with peculiar complacency, limited and insignificant as it is compared with that of the great mass on the subject of annexation? If this inquiry is insisted upon, it will certainly beyond a doubt exert an injurious influence upon the feelings even of our friends in the U States, and will afford our enemies an opportunity of attacking us in a point which *one* has stated to be a very tender one to us. If this course is adopted, it will inevitably defeat the measure

of annexation. What are the conditions of the resolutions, which we have accepted? That we shall form a Constitution republican in its spirit and form, which shall not conflict with the Constitution of the U. States. Is there one who can for a moment believe that we can take away any powers which we give to the Supreme Court of the United States, by accepting the proposed terms and going into the Union? Is there one who does not perceive that this course on our part would defeat the great measure? If there be any such, he may possibly vote for a resolution of this kind: for myself, I cannot. I see no good that can result from it: it seems to me unnecessary, unjust and unwise. I hope the Convention will not extend the rule; but on the contrary will say, that although under ordinary circumstances it is usual to extend it, yet in an instance of this kind, courtesy will not compel them to place themselves in this or any other unwise position.

Mr. *Baylor* proposed a substitute—instructing the committee on the Judiciary to take into consideration how far the title to lands owned by citizens of Texas will be affected by an adjudication of their rights in the Federal courts of the United States, and to report the result of their deliberations.

Mr. *Parker* said he presumed he had as great an anxiety to effect and consummate the great measure of annexation as his friend from San Augustine. He regretted extremely that a resolution introduced by himself for the purpose as he believed of enlightening the minds of the community upon a subject of importance, should have had the effect of harrowing up the feelings of that gentleman. He was as much indisposed as any one to incorporate anything into our Constitution palpably contrary to the form of government of the U. States. He trusted his object was fully and clearly understood by every gentleman upon this floor. And every gentleman upon this floor, he had no doubt, had seen in the public prints the instructions from a portion of the citizens of Houston county to himself and colleague (Mr. Lumpkin,) to oppose the annexation of Texas to the United States, on all occasions. He knew that a portion of the citizens of his county who are in the opposition, are thus opposed because they believe that the adjudication of their land titles will ultimately go to the Federal or Supreme court of the U. States, and there be decided without any regard to the laws of Texas. Many of those citizens had no other objection to the annexation of Texas. As to the courtesy which the gentleman from San Augustine so positively withholds from him in this case he could say to that gentleman that he had not come here to ask courtesy, when the rights of the people demand prompt and honest action. The gentleman has tortured this subject into a construction which the resolution will not justify, either by its letter or spirit. He speaks of it as changing the Constitution of

the United States. There is no such proposition in the resolution. It only requests your Judiciary committee to take under consideration the propriety of the measure set forth on its face. Sir, is this a proposition to run afoot of the Constitution of the United States? No, sir: far from it. But if the committee should take the view of the subject that he did, they would be able to make a report to this Convention that would harmonize nearly the whole people of Texas upon the great question of annexation; a question which he had sustained as a private citizen, as well as in the Senate of the Congress of the country a few weeks since, and also in this Convention only a few days past. His course has been too well known to be misunderstood. He was fully satisfied that if the Convention should adjourn without having manifested some disposition tending to quiet the minds of the people, a club, as he before remarked, would be furnished the enemies of annexation, which would be so used as to cause hundreds of the best citizens of this Republic to vote against the adoption of the Constitution. He would willingly vote for the substitute of the gentleman from Fayette: perhaps it was couched in better language: his object was to call forth from the Judiciary committee such a report as will satisfy the mass of the people upon what ground their land titles do and will stand.

Mr. Baylor said: Mr. President, I take it to be a desideratum at this period of the history of our country, that we should act upon the subject of annexation with as great a degree of harmony and unanimity as possible. So far there has been great unanimity of action upon the part of the President, the Congress and the people. In all probability the result of our deliberations here will be submitted to the people at large for their adoption or rejection; and I fervently hope, that when it shall take that course it will be adopted with the same unanimity of sentiment, and that there will be found scarce an individual throughout the wide extent of our country to vote against the adoption of the Constitution. If there shall be a division upon the question, if a respectable minority even shall vote against the Constitution, the circumstance may be, and in all probability will be seized upon by the enemies of annexation, and wielded against us in the United States. It will be said that a large portion of the people were opposed to annexation, and they will point for proof to the vote upon the ratification of the Constitution. I say then, that in order to secure harmony in the action of the people upon this question, I feel desirous, as far as my humble endeavors may go in this body, to quiet the public mind, and give repose and tranquility to the public feeling. Sir, I may truly say of this subject that it is one in which I have taken a deep and abiding interest. And I have marked with some degree of care and attention the popular feeling in relation to it; I have listened with an attentive ear to the various objections urged against the measure. I am well aware of the feeling which existed in

Robertson county, and perhaps in Milam, soon after the appearance of some unfortunate articles in the National Vindicator. I do not know the motive of those publications; perhaps they were designed for the promotion of the public good. At all events they had a tendency to excite the popular fears, and in fact they caused a good deal of alarm in the minds of some of the best citizens of Robertson county. And the result was, that when I went to perform my judicial duties in that part of my district, I found some of the best of the people opposed to annexation. They had been told that they would have to travel to Washington city, perhaps, to attend to their law suits; that their rights would not be adjudicated in accordance with their domestic laws, but alone by the Constitution and laws of the United States. And if such was to be the result, they would oppose annexation. For we all know that there is no subject in relation to which a more lively and exquisite sensibility is felt by the people of this country than that of their land titles. The matter was then fully explained by my learned friend from Washington, Judge Lipscomb, and others, and the public mind became tranquilized upon the subject. I learn from the gentleman from Houston that great anxiety in relation to it is manifested by the people in his section of the country. Where then the objection to placing the matter before the Judiciary committee, with the qualification which I have proposed, feeling the force of the objections urged against the original resolution. The language of that resolution is certainly at war with the Constitution of the United States, and I should dislike to see it with its peculiar phraseology passed by this grave and deliberative body. But I am satisfied that no harm can result from the reference of the subject to the Judiciary committee. Their report can be published: the people will read it, and the probable result will be, a good degree of unanimity in the ratification of the Constitution. Sir, I remember that when the Convention which framed the Constitution of the United States, was about to close its labors, that great and good man, Dr. Franklin, rose in his place, and proposed to those who during the session had been battling against many of its features, that it should appear upon the journals that the Constitution was unanimously adopted by the members of that body; and, said that great man, whose mind was matured and mellowed by long experience, whatever objections we may have had to many features of this instrument, however earnestly we may have contended against many of its provisions, let not a dissenting word be whispered beyond these walls, in order that the people may adopt it with the same harmony and unanimity. With this feeling, and a disposition to enlighten the public judgment, I shall vote for the resolution. It is simply a resolution of inquiry, and no more.

Mr. Caldwell said it appeared to him that the substitute did not meet the views of the gentleman who proposed the first resolution. This seemed to embrace a more confined view of the subject, than that gen-

tleman desired. He said he had drawn up one which he would offer to the House, and which he thought would meet the views of the gentleman from Houston.

The substitute which he read was a resolution instructing the committee on the Judiciary to inquire into the extent of the jurisdiction of the Federal courts, &c.

Mr. *Hemphill* said the last resolution offered would extend to all questions which could arise in this country. The former had only for its object the jurisdiction of the courts of the United States in the adjudication of titles to lands. A question might arise under the first resolution—and that is, whether when a suit shall be decided in our highest State tribunals, an appeal should be allowed to the U. States courts? He thought it unadvisable to express any opinion on that particular question. In the U. States several of the State tribunals have denied the existence of the right to appeal to the Supreme Court of the United States. The question of the jurisdiction of the U. S. courts had been extensively investigated before the constituency he had the honor to represent. The subject was well understood by them. He would at present only say that the courts of the United States in taking cognizance (in proper cases,) of our titles to lands, would be regulated in their decisions by no other rules than those known to and recognized in the laws of Texas.

Mr. *Lipscomb* said he was not satisfied with any resolution that had been offered upon the subject: nor was he prepared at this time to offer one that would satisfy himself. Yet he believed that something might be profitably done by an investigation before the Judiciary committee. He believed that the people of some counties had been acted upon as far as they could be by means of false alarms. He had seen it roundly stated in the papers that every question of land titles would go as a matter of course to the Supreme Court of the United States. What lawyer would believe that? Yet the statement was well calculated to alarm persons unacquainted with these matters, on account of the great expense which would be attendant upon suits taken from our own tribunals to that. It would be believed; it would have its effect; it would determine the position of many in regard to annexation, as if it were founded in fact.

He would propose to lay the subject on the table until a suitable proposition could be brought before the Convention. He was as much opposed as any other gentleman to doing anything which would place us in a ridiculous attitude by an inquiry into the propriety of amending the Constitution of the U. States. But still he would have this body do what they could to satisfy the public mind; and if a report could be had which would accomplish that object, and the members of this Convention should neglect to furnish it, he thought they would fail in their duty to the people of Texas.

He moved that the resolution lay on the table.

Mr. *Henderson* had a great objection even to instituting an inquiry. The question of the propriety of limiting the jurisdiction of the United States Supreme Court was one that he could not contemplate with any sort of calmness. But he was perfectly willing that a course should be taken to bring out an expression of opinion upon the subject by means of a report. He thought the people of Texas could be satisfied that no evil was to be apprehended.

Mr. *Love* moved that the resolution be referred to a select committee: it would save time.

Mr. *Jewett* said: Mr. President, If the committee are instructed to report at a definite time, I will sustain the motion of the gentleman; otherwise I shall be bound to oppose it. For my own part, I can see no danger to be apprehended from an expression of opinion upon questions of so great importance. Annexation is an anomaly in political history. If we had been a territory, it might be presumed that the people would be familiar with the jurisdiction of the United States' Courts. But we have now been nine years an independent nation. During that time we have drawn no inconsiderable portion of our population from beyond the Atlantic. You know, Mr. President, for you have seen them in battle, that some of the best of our citizens are of those who did not emigrate from the United States; and they are naturally strangers to the jurisdiction of the United States' Courts. It is due that minority, if a minority, to spread before them all the necessary lights upon the subject, that when they come to vote, they may vote understandingly. This portion of our citizens embraces many of the best, bravest, and worthiest among us; and it is certainly due them that they should be enabled to vote intelligently upon the great question soon to be submitted. I can confirm the statement of the gentleman from Fayette with regard to the extreme sensibility and solicitude felt upon this subject in the county which I represent. There is an area of seven thousand square miles in which may arise a rich harvest of litigation, unless the desired action shall be taken by this Convention. There is a large proportion of lawyers in this body; a class always regarded with suspicion by the people; and it is due the profession, as well as the people at large, that they should be enabled to understand the question in all its bearings.

Mr. *Love* said that the best protection which the settler had in his opinion, was the limitation law of the United States. The Supreme Court of the United States had decided that seven years limitation was a bar to an action. We have had five years limitation during the exist-

ence of the Republic; and there is no question but the Supreme Court will decide that five years is sufficient. You will find at last the sole check upon land litigation, which is so destructive of the best interests of a country, in the law of limitation. He believed there was not one here who was not in favor of a short limitation to secure the property of the settler. He was opposed to any measure calculated to disturb the occupant in his possession, and equally fearful of doing any thing which might have the appearance of dictation, or a declaration of what should be our construction of the Constitution of the United States, or the jurisdiction of the courts of that country. That is fixed, and will remain unalterable: and the only possible effect of such a course of action upon us, would be the rejection of our Constitution. He thought it would be best to refer the subject to a select committee, who might present their views upon it as speedily as possible.

Mr. *Henderson* said, that he was willing to express to the world his opinions upon this subject. And the people are not as ignorant upon it as they might be accounted. If necessary however to enter into this legal investigation, that could be done without incorporating any thing of the kind into the Constitution, and he was willing that course should be taken. He was willing to state to the people what this Convention believes to be the jurisdiction of the courts of the United States: to give an expression of opinion for the purpose of meeting the statements published in the newspapers; for the purpose of contradicting the impressions which these false publications have produced upon the minds of the people of Texas. Such statements have been made, and as he presumed, by persons who knew at the time they were misrepresenting the facts. With that view alone, he was willing to sustain the motion of the gentleman from Washington.

Mr. *Mayfield* said he could not see any danger in any of the resolutions. The fact was well known that a great degree of feeling has been excited and the sensibilities of the community have been very much roused upon the very subject brought before the Convention by the several resolutions now offered. For himself, he was willing to vote for any and all of them. The inquiry could only tend to enlighten the public mind upon a subject of interest. He was satisfied no gentleman could for a moment believe that the result of a reference to the Judiciary Committee would be a recommendation to the Convention to limit or restrict in any degree the jurisdiction of the Supreme Court of the United States. Such a course would only terminate in the defeat of annexation. It was well known that when we become a State, and we are a State *de jure* now, if not *de facto*, we can incorporate nothing into our Constitution inconsistent with the Constitution of the United States. He would vote for any or all of the resolutions.

Question put on the reference to a select committee. Carried.

Mr. Forbes moved a reconsideration of the vote, on the reference to a select committee. Reconsidered.

Mr. Lewis said he preferred a reference to the Judiciary Committee. It was that committee alone that could give dignity and character to the result of their deliberations in a matter of this kind; it was the only one in which the people could have confidence. Although he believed there were many persons in the country opposed to annexation in consequence of the impression alluded to by gentlemen, yet he thought they were greatly mistaken in those ideas; and that a suitable report from the Judiciary Committee would reassure them, and aid in producing the unanimity so desirable. He thought therefore that if it should have no other effect than to present the question in its true aspect and all its bearings before the people, such a report should be had; and no doubt it would change the views of many of those now opposed to annexation.

Mr. Ochiltree said: I have refrained thus far, Mr. President, from saying any thing upon the subject before the Convention; but inasmuch as the vote referring it to a select committee has been reconsidered, I feel constrained to offer a few remarks by way of showing why I have opposed, and shall continue to oppose the reference of such resolutions to any committee whatever. To whom the good, and what the good to be anticipated from such a course? It will be within your recollection, Mr. President, as within that of every member of this Convention, that when the announcement was made from a high place, that there were contingencies attendant upon annexation, the people indignantly answered that they were willing to take annexation with all its contingencies. They have matured then well in their minds; and no report that could possibly be produced by the ingenuity of the Judiciary Committee, would, at this day, change one solitary vote for or against the measure. I will not believe that any citizen has made up his mind upon this great and important question without having fully considered all the interests connected with it. The people have determined, from one end of the land to the other, to go into the American Union, and to abide all the consequences of their choice. They ask no exclusive privileges; they would not willingly accept any privileges granted to them, and denied to every other member of the Confederacy. Is there a single individual in Texas, who has rights to be adjudicated, and is not willing that they should be decided by the same laws and governed by the same principles as those which prevail in our sister States? I trust not; I believe not.— I believe that the minds of the people are so fully made up, that no report which could be published would change the opinion of a single individual. I believe the people have determined to accomplish the great measure of annexation at every risk, regardless of consequences. They are willing to trust much to the United States: confidently believing

that no undesirable laws will be forced upon them, which the Constitution of the United States does not absolutely require. I shall oppose every thing like a reference of this subject. The citizens of my county, at one of the largest meetings ever convened in the Republic, have declared their willingness to take annexation with all its contingencies. The course proposed will only stir up a subject, powerful to do mischief, without the prospect of any advantage to be received from its agitation.

Mr. Moore said: Mr. President: when the resolution was first submitted by my friend from Houston county, I was opposed to its adoption; because I thought it calculated to have an injurious effect among the people, and to bring discredit upon the Convention. It contained, as I thought, an imputation that we were what we have been represented as being, a republic of refugees from justice. But as amended by the gentleman from Fayette, all my objections are removed. We are told by the gentleman from Nacogdoches who has just taken his seat, that the people have determined to take annexation with its contingencies. I have looked around the country with care, I have heard reports from every section; and I find mingling with the rejoicings of the people the deep mutterings of discontent. That gentleman, I know, has heard them; and I fear, Mr. President, unless a full and fair inquiry shall be made, as suggested by the gentleman from Houston, that these mutterings will increase, and that when our Constitution shall have been adopted, it may be opposed in the American Senate on the ground that the publications and journals of the country show a large and respectable portion of the citizens of Texas yet opposed to annexation. I wish that when our Constitution shall be adopted, it may be with the same unanimity which has been displayed by this Convention in adopting the ordinance. I know that my friend from Houston is a warm, ardent and sincere friend of annexation. I have noted his course, not only here, but upon the floor of Congress. I know there is none more sincere; and that in submitting this resolution he was actuated by the purest motives; by a sincere wish to delay the discontent, the dissatisfaction and opposition which he has seen gathering round him in his own and the adjoining counties; which I have seen in my own county, and which has been displayed upon this floor by one of the delegates from the county of Galveston. I hope however that all these feelings will be allayed, and that the people without a dissenting voice will adopt the Constitution. I hope the proposed inquiry will be instituted. I have been silent during the discussion, because I was aware that it was customary at this stage of the proceedings, quietly and calmly to submit these matters to some committee. I have no fear of any injury arising from such a reference; having full confidence in the Judiciary Committee appointed by the President, I shall cheerfully abide their decision upon the subject.

Mr. *Young* said that if he understood the object of the resolutions, it was that the committee should make a report, in order to obtain an expression of the sense of this Convention with regard to the various bearings of annexation to the United States, so far as the application of their laws to Texas and the jurisdiction of their courts are concerned. It seemed to him then that the resolution offered by the gentleman from Fayette covered the whole ground. This was a subject which created a great deal of confusion in his part of the country. It was highly desirable that some course should be taken calculated to quiet the fears of those people. He preferred the resolution offered by the gentleman from Fayette.

Mr. Ochiltree moved to lay the whole subject upon the table.

Mr. *Mayfield*, with leave of the Convention, spoke as follows:

I think, Mr. President, that the question is entirely misunderstood, or misapprehended by most of the persons whom we have heard discuss the merits of the several resolutions offered. It seems to be considered by some, that the inquiry proposed by the gentleman from Houston is unnecessary and absurd in itself. But we are told by that gentleman that the sentiments and feelings of many of his constituents are such upon this subject, that if their land claims are to be adjudicated in the courts of the United States, they would rather give them up at once than to incur the expense of prosecuting them at so great a distance from their homes. Now if such is the state of the public feeling, it is because the people do not understand what absolutely is the extent of the jurisdiction of the courts of the United States, and the ultimate effect upon the rights and property of the citizens of Texas in the event of annexation. It has been suggested that the action proposed may jeopardize and retard annexation. But if the public mind is in the situation represented, is it not proper that it should be informed of the true state of this question? And if the point submitted shall be referred to the Judiciary Committee, and the result of their deliberations reported to this House in language plain, simple and honest, will it not furnish the strongest argument to the citizen to be satisfied with such terms as may be fixed in the Constitution, explaining to them the new relations existing between themselves and the courts of the United States in the event of annexation? Let the committee investigate all the points upon which the public mind is not entirely satisfied, and fully explain the relative situation in which we shall be placed, and I venture to assert it will be the strongest appeal which we can make to every citizen of the republic to ratify the Constitution which may be submitted by this body. There can be no danger in this course; an inquiry of this kind should excite no alarm. However plain these matters may appear to members of the Convention, it will be recollected that a large number of the deputies here assembled are gentlemen esteemed learned in the law, and of course conversant with the principles which will govern us after our reunion

with the mother country : but the great mass of the people are not so informed; they are unacquainted with the new political relations which will immediately arise between us and the Confederacy of which we shall form a member. So long as there is any gentleman desirous that his constituents shall be informed upon the subject, I say let it be done if it can be done through the action of the proper committee. And for myself I can see no danger of jeopardizing annexation. Those who will look at the history of the last few months, will recollect that the party unfavorable to annexation, and if there were any such political party in existence at all, it was this which endeavored to operate upon the public mind by measures partly secret in their character, made a skilful use of these very points which it is now proposed to explain. Yes, sir; if I have been correctly informed, political combinations have been attempted to be made for the purpose of exciting the people upon this very subject, scaring and alarming them with the assertion that their rights would have to be brought before the United States' Courts for adjudication. Shall we then hesitate to institute an inquiry upon these subjects, when an organization of this kind, as we have reason to believe, has been attempted for the purpose of alarming the people in relation to the adjudication of their rights? But even that scheme failed: all schemes devised to prevent or retard annexation have failed. Let the people then be truly and fully informed upon these matters, and I venture to say that there will be no danger with regard to the ratification of annexation; and the inquiries will not cause us to incorporate any thing into our Constitution incompatible with the Constitution and institutions of the United States, or which will prevent its ratification on the part of the government and the people of that country.

Mr. President *Rusk* addressed the Convention as follows—Mr. Forbes in the chair :

I will give my reasons in a few words for voting against the motion to lay the subject on the table. The subject of land titles in Texas has been and will for a number of years continue to be a very exciting one. We have this matter now before us; if it is laid upon the table, it will come up again, and we shall again have the same excitement. I shall vote therefore against the motion, with the hope that the subject may be referred to the appropriate committee. If the committee propose a resolution similar to that offered by the gentleman from Houston, I shall vote against it, whatever form it may take. We have accepted the proposition of the United States in relation to annexation, and therefore are now a State in Convention assembled, for the purpose of framing a State Constitution, and not for the purpose of altering the Constitution of the United States. A course of this kind would be a reflection upon the Constitution of the United States. This is a direct proposition, so far as it goes, to alter the Constitution, and in connexion with a subject, that

of land claims, which will inevitably produce confusion whenever it is brought up. The proposition of the gentleman from Fayette, however, is such as I can vote for. It simply requires the Committee on the Judiciary to inquire how far, after we become a State, and we are that now in my opinion, the laws of the United States will operate upon our land titles. I am anxious to see the subject investigated, and reported upon. It is due ourselves, the country and the opposition. There has been opposition, and of a serious character, to the annexation of this country to the United States. It has presented itself in various forms; and means have been employed, intended to be potent in their operation, to defeat the known and expressed will of the people. That opposition is not dead; and if this Convention give it a capital, it may still continue to operate to the defeat of a measure in which the feelings of the people of Texas and the United States, and the lovers of constitutional liberty throughout the world, are deeply enlisted. Men have been alarmed by every possible means; their fears and their interests have been appealed to; the laws of the United States have been misrepresented and misquoted, and a tribunal has been assailed and traduced, which stands higher than any other in the world. It has been stated that all your land titles would go there to be adjudicated; that the United States' Courts would establish every old fraudulent claim. These things have been said; and they may be said again; and the fears of the people may be strongly appealed to. I have said before the people, that the United States will not get jurisdiction in these cases; such has been the decision of the Supreme Court itself, and this the objectors knew at the time. The questions now exciting the people in relation to their titles to lands cannot be brought before the Courts of the United States. This is the law, and this the Judiciary Committee can say. They can go further: and quote the decision of the Supreme Court upon questions of limitation; they can show that the laws of Texas will be the invariable rule of that Court. That court has sanctioned a limitation of seven years, one of twenty years, one of five years, and one almost in the very words of our Statute, of three years. The English Courts have ever looked with suspicion upon laws of limitation; the United States' Courts, on the contrary, set out with the principle that they are not suspicious; that they are statutes of repose, made for the purpose of compelling those who have claims against the unfortunate, to enforce them within a reasonable time. I shall vote, then, in the first place for the substitute; and then for its reference to the Committee on the Judiciary. There can be no harm in the inquiry. I believe the annexation of this country to the United States, to be of the utmost importance; a measure in which the interests of the present population of Texas, and future generations are deeply involved. And I believe that when this subject comes to be examined in all its bearings, so far from inducing opposi-

tion, it will confirm those now in favor of the measure, and augment their number.

Mr. *Ochiltree* said he was still of the same opinion, but as he did not wish to stifle investigation, he would withdraw his motion.

On motion of Mr. *Moore*, the substitute offered by Mr. Baylor was adopted.

Mr. Darnell offered the following resolution:

Resolved, That the Committee on General Provisions be instructed to enquire into the expediency of providing by law, at the earliest day practicable, that all or one-half the property belonging to the wife, by deed, gift, bequest or inheritance at the time of her marriage, shall remain the property of the wife, as also one-half of the property of the husband at the time of marriage shall vest, as also one-half of all property that shall be acquired after marriage, after the payment of all just debts shall likewise vest in the wife; also the proceeds of the property belonging to the wife shall be at her own disposal.

Which resolution was read and laid on the table one day for consideration.

Mr. Miller offered the following resolution:

Resolved, That the President of this Convention be and is hereby authorized and requested to make a requisition upon the Secretary of the Treasury for *six thousand dollars*, to be used for the *per diem* pay and mileage of the members, and the contingent expenses of the Convention.

On motion of Mr. Young, the rule was suspended requiring the resolution to lay on the table one day, and the resolution was taken up and adopted by the Convention.

On motion of Mr. Van Zandt, the Convention adjourned until Monday morning, 9 o'clock.

Monday, July 14th, 1845.
9 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The resolution of Mr. Hogg, of Friday last, authorizing the Hon. Wm. B. Ochiltree (one of the delegates from Nacogdoches county,) to sign the ordinances adopted by this body of July 4th, was taken up and adopted.

The resolution of Mr. Cuney, providing that the first House of Rep-