transaction of the business of the General Land Office for the counties of ———.

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

On motion of Mr. Moore, the report of the committee on the Executive Department was taken up, and on motion of Mr. Caldwell, it was made the special order of the day for to-morrow.

On motion of Mr. Van Zandt, the report of the committee on the Bill of Rights, was made the special order of the day for 9 o'clock, to-morrow morning.

On motion of Mr. Cazneau,

The Convention adjourned until to-morrow morning, half past 8 o'clock.

Tuesday morning, July 15th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Evans, from the minority of the Committee on Privileges and Elections, made the following report:

Committee Room, July 12th, 1845.

To the Hon. the President:

The undersigned, dissenting from the majority of the committee on Privileges and Elections, to whom was referred the memorial of Horace Burnham, who claims a seat in this Convention as a deputy from the district of country embracing the settlement at and near the forks of the Trinity river, begs leave to report:

That in the opinion of the undersigned, there is no similarity between this case and any other which has been presented to the consideration of this Convention, but that this case involves all the argument urged in support of those cases, besides many other potent and equitable considerations, the most important of which are—That owing to the remote and sequestered situation of the settlements at the forks of the Trinity, the President's proclamation recommending the Convention was not received by them until nine days prior to the time therein recommended for holding the election. That the settlements are comprised within a portion of Nacogdoches and Robertson counties—that it is the distance of 250 miles from the nearest point in those settlements to the town of Nacogdoches, (the county seat of Nacogdoches county;) that it is the distance of 160 to 170 miles from the place at which this election was held, to Franklin, (the county seat of Robertson county,) and that consequently it was impossible for these voters to comply with the requisi-

tion of the President, as in his proclamation is contained that this disability originated not by their act or consent, but by reason of the shortness of the time between the receipt of the proclamation, and the time therein specified for holding the election.

Second—That these settlements from common dangers and common interest, are cemented into and actually form a distinct community, cut off by wide stretches of uninhabited, and in some districts uninhabitable country, from the several settlements in the surrounding counties, therefore it is, that neither Nacogdoches or Robertson have ever extended their civil or political jurisdiction over these settlements.

Thirdly—The boundary lines separating the counties of Fannin, Robertson and Nacogdoches, are so illy marked and defined, that it is frequently a matter of extreme doubt which of these several counties have the jurisdiction.

Fourthly—These settlements now number over three hundred citizens, and are filling up more rapidly than any other portion of Texas.

It is a mistake to suppose that this section of the country is represented by the deputies from Nacogdoches and Robertson; they have but one Representative, the memorialist whose claims are now the subject of consideration.

In view of the foregoing considerations, the undersigned recommends the adoption of the following resolution:

L. D. EVANS.

Resolved, That Horace Burnham is entitled to and be permitted to take his seat in this Convention, as a deputy from the district of country comprising the settlement at and adjacent to the forks of the Trinity river.

Which was laid on the table to come up among the orders of the day.

The Convention then proceeded to the

ORDERS OF THE DAY.

The report of the Committee on the Bill of Rights and General Provisions of the Constitution was taken up, and, on motion of Mr. Cunningham, it was laid on the table for the present.

The report of the Committee on Privileges and Elections, and also the report of a minority of said committee in the case of Horace Burnham, claiming a seat in this body from the settlements near the three forks of the Trinity, was taken up.

On motion of Mr. Evans, the Convention went into committee of the whole, on the substitute offered by a minority of said committee—Mr Lewis in the chair.

Messrs. Hensley and Armstrong, of Robertson, were introduced and examined as witnesses.

Whereupon, the committee rose and reported progress, and was, by

leave of the Convention, discharged from the further consideration of the subject.

On motion of Mr. Evans, Mr. Hensley was allowed to appear as an attorney, and address the House in behalf of the claim of Horace Burnham.

Whereupon, Mr. Hensley addressed the House as follows:

I regret, Mr. President, the existence of that necessity which has compelled me to appear before this body, in the two-fold light, of witness and attorney. I should not avail myself of the privilege which has been so courteously extended to me, but for the fact that the claims of the gentleman have not been presented to the committee, to whom was referred the consideration of his memorial. Besides, there exists in his mind, a fear that he will not be represented on this floor, and consequently, that the facts involved in the case will never (unless presented by some one out side of the bar,) reach the ear of this House, except so far as they may be evolved by the minority report of the gentleman from Fannin. These considerations, sir, together with the obligations of duty under which I am placed to my friends and neighbors, the gentleman's constituents forbid that I should remain silent.

It is contended by some that the will of the majority is supreme, and that their dictum should, in all cases and under all circumstances obtain. That the ratification by the people, of the President's recommendation as contained in his proclamation of the 5th of May, precludes a minority from dissenting therefrom; and excludes the entertainment of this case before this body. However potent at first sight these reasonings may appear, I must nevertheless be permitted to dissent from them. The minority at all times and under all circumstances have rights and privileges, the infraction of which must of necessity be accompanied with political duplicity and injustice; and the denial of the existence of which cantravenes the express declarations of the very fathers of free institutions: who in solemn conclave declared them to exist, and that they were inalienable. The doctrine, sir, or partial representation in a primary organic meeting of the people, to my mind, is so monstrous, and so far outrages all correct ideas of free institutions that I cannot entertain the belief for a moment, that any member upon this floor is so far stultified in his notions of governmental policy as to subscribe to it. Suppose, Mr. President, for the argument of the case, that nineteen twentieths of the citizens of Texas assembled should solemnly declare that the other one-twentieth part were divested of all political rights; and we will suppose, he, the small minority to bow in humble submission to the dicta of their masters. Could you, Mr. President, entertaining chivalric notions of freedom, find it in your heart to applaud this dastard submission? No, sir, you would brand them as having been cowardly recreants, because of their fear to rise like freemen and assert their rights. I propose to prove to this Convention, that three

hundred citizens of this Republic have been disfranchised by the President of the Republic; I propose to show that without their act or consent, they have been rendered incompetent to give a legal vote, or one in accordance with the proclamation of the President.

The constituents of the gentleman whose claims are now the subject of consideration, reside in the counties of Robertson and Nacogdoches respectively, at and adjacent to the forks of the Trinity river, and comprise three hundred of the best citizens in the Republic. These men never have voted at any election and were not taken into the computation of the President upon which he based the ratio of representation, and in consequence are unrepresented and must remain so, unless the gentleman's claims are admitted. That these constituents are represented by the gentlemen from Nacogdoches and Robertson I deny.—They do not claim them as forming a part of their constituency, nor do they know any thing about their locality, numbers or interests. I must be permitted to contend, that owing to the isolated and sequestered situation from the settlements in the respective counties in which they reside, that they are as much represented by the deputies from Bexar or San Patricio, as they are by the gentlemen from Robertson and Nacogdoches.

I shall now proceed, notwithstanding the adoption by this body of the Procrustean rule as recommended by the President, to show that this gentleman has claims upon this House—such claims as involve the most potent principles of equity and justice. I propose the presentation of two series of facts in my opinion, sufficient of themselves, to establish his claims to a seat in this body.

It is a well established fact that in the vicinity of the place at which this election was held, the proclamation of the President recommending that Convention, was not received until nine days prior to the time therein recommended for holding that election. It is also known to gentlemen on this floor, that it is the distance of 250 miles from this place to the town of Nacogdoches, the county seat of Nacogdoches county, and that it is the distance of 170 miles from this place to Franklin, the county seat of Robertson county; and that it is a wilderness country between this point and Franklin, and also, between this point and Nacogdoches, difficult to travel in consequence of there being no roads, and its being infested by Indians.

It will therefere be readily perceived, that it was physically impossible for the voters to comply with the requisition of the proclamation, in consequence of the shortness of the time between its reception and the time therein specified for holding the election. The question of law then recurs, can the rights of any man or set of men be prejudiced, except by his or their own act or consent? I contend that the maxim of law that they *cannot*, amounts to an established axiom with the legal profession. Since then, it was impossible for those voters to give a le-

gal vote, or one in accordance with the recommendations contained in the proclamation, they adopted the only remaining alternative, which was to select one of their own fellow citizens to represent their interests, relying upon the justice of this honorable body to legalize his claims. You have the power, the *equitable* power, and their prayer is that you exercise that power, and thereby permit them to have a voice in your deliberations.

Again, there exists another disability which prevented these voters from giving a legal vote, over which they had no control, and which goes to establish and make binding upon this House, the admission of the gentleman's claims.

It is an established fact, that the county boundaries of Fannin, Robertson and Nacogdoches are so illy established and defined, that it is a matter of question with a large portion of this gentleman's constituents, as to the county in which they reside. If, then, time had been given, in which to have acted under regular writs of election, a large proportion of these voters would not have known in what county to have deposited their ballots.

In view of these considerations, in connection with others contained in the minority report, I leave the matter to your superior judgment, knowing that the importance of the case will insure for it your respectful consideration.

Mr. *Evans* said he had one or two suggestions to make. He laid down as true the proposition that this Convention had no authority to enquire into the qualifications of any of its members. This Convention has only power to form a Constitution, which implies the right to make use of such means as may be necessary, and only such as may be necessary, to carry out that power. It can therefore elect Clerks, a Sergeant-at-Arms, Door-keeper, and all necessary officers. But whenever it undertakes to decide upon the rights of its members, whenever it takes the position of excluding any member, it transcends its powers, and can as well turn one Deputy out of doors as another. He would affirm this, that his Honor the President might as well be excluded from the privileges of the House as Mr. Horace Burnham. He would affirm again that if this House should believe it necessary for the purpose of forming a Constitution, it might invite Dr. Franklin himself, if living and in this country, and in the possession of his once splendid powers, to take a seat here, not only to participate in the deliberations of this body, but to vote as a member. This Convention has the power to call to its aid every means and every individual that may be made available for the purpose of furthering the objects for which it is assembled. The great object before us is the annexation of Texas to the government and territory of the United States; the formation of the Constitution is a means only. Now if it be made to appear that it is necessary, to the

consummation of this great object that Mr. Burnham should take his seat here, as the representative of a large and respectable portion of the country, he trusted this House would permit him so to do. Now annexation is a contract between three contracting powers, the government of the U. States on the first part, the government of Texas on the second part, and the people of Texas, the whole people, not this, that or the other section of the country, but emphatically the people of Texas, constituting the third party. He would simply suggest the question, if this contract would bind the U. States unless every portion of Texas should be heard? Would it be binding upon this portion of the country numbering more than three hundred citizens? Gentlemen labor under a fatal mistake in supposing this portion to be represented by the delegates from Nacogdoches and Robertson. The large settlements in Santa Fé are just as truly thus represented, as the country about the Forks of the Trinity. He might say that with the exception of one of the gentlemen from Nacogdoches, (Gen. Rusk,) on account of his great military renown, a large portion of those citizens do not know the deputies from those counties; many have not heard of them. Many of them have recently come into the country; and there is no mail route passing by them. This is a district entirely cut off from the surrounding counties, and a border country. Suppose that the work of annexation should be consummated on our part—and the contract signed, sealed and delivered; he would not affirm or deny the proposition, but merely suggest it: suppose that this community, numbering over three hundred citizens, should have intelligence and moral worth sufficient to make out a case and submit it to the United States. They live upon the frontier: where could the boundaries of this country be placed? They might take a stand which would ultimately defeat annexation. Not that it ever entered their minds, for they are as desirous of annexation as any member of this body. Most of them are new emigrants from the highly respectable and democratic States of Arkansas and Missouri. He saw many of them on their way. Polk and Dallas, and Texas, with the very juice itself, was inscribed upon their waggons. They had rights, and they ought to be respected.

Mr. Young moved to lay the report on the table till to-morrow, which was lost.

The question was then taken on the adoption of the substitute as offered by Mr. Evans, giving to Mr. Burnham a seat in this body as a delegate from the settlements of the three forks of the Trinity, and lost by ayes and noes as follows.

Ayes—Messrs. Evans, Everts, Hunter, Latimer of L., Latimer of R R, Tarrant, Wright and Young—8.

Noes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau,

Clarke, Cunningham, Cuney, Darnell, Davis, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McNeill, McGowan, Miller, Moore, Navarro. Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Van Zandt, White and Wood—48.

The question was then taken on the report of the committee on Privileges and Elections, declaring that said Horace Burnham is not entitled to a seat in this body, and the report and resolution of the committee were adopted.

The resolution of Mr. Cunningham of yesterday, instructing the committee on the Judiciary to enquire into the expediency of inserting a clause in the Constitution, providing for the appointment of officers to enquire into and cause to be brought before the District Court for adjudication, land titles forfeited under the laws of Coahuila and Texas, &c., was taken up.

Mr. *Cunningham* said he wished to explain his object in introducing this resolution. It is known to every person upon this floor, that all titles to lands issued by the government of Coahuila and Texas, had certain conditions annexed to the grants, upon the non performance of which the titles were divested, and the lands became again the property of the State. It is true that many of these conditions were removed by the land law of the Republic of Texas, in cases of particular grants to colonists for a single league and labor. But there were some conditions annexed even to these grants, which have not been removed. And most of the conditions annexed to the large grants have not been touched. If not complied with those lands are now the property of the Republic of Texas. By the Constitution of this Republic the lands of all persons who took up arms against it, who aided the enemy, or left the country for the purpose of avoiding a participation in our revolutionary struggle, have been forfeited. Notwithstanding the law, the Judiciary of the country have held that there is no mode by which these titles could be brought before their tribunals for adjudication; they have acknowledged the jurisdiction of the District courts, but as Congress has failed to provide the *modus operandi*, they have refused to entertain them. Congress has hitherto refused or neglected to pass any law designating the mode by which they can be adjudicated. Hence the laws and the Constitution relating to this matter have become an absolute nullity. In consequence of this state of things, many lands in this part of the country are tied up. There are three titles set up for these lands; first, that of the original grantee: second, that of the Republic of Texas, now dormant; and third, that of the settler or locator. His object was to have the whole matter brought before the able and learned committee on the Judiciary, that some action might be had upon the subject.

Mr. *Kinney* said, he had not intended to take any part in this discussion. But he thought he could see into the object of this resolution. He thought it was to divest vested rights from the citizens of the depopulated counties, and to deprive them of their lands. He would give his reasons for that opinion. Since his residence in the western part of the country, he had had the honor to represent the counties of Goliad, Refugio and San Patricio in the Congress of Texas. He knew that many locations had been made by persons residing in different parts of the Republic upon lands granted to the citizens of those counties under the old colonial law or Empresario grants. He had heard it remarked by many who had made these locations, that in consequence of the citizens leaving their lands and going to the United States, or to the interior settlements of Texas, that removal took away their rights to those lands. He had also heard it said that many of these citizens came into the country when lands were of no value, and received large grants, some of them for eleven leagues, of the best lands in the country; that it was too much for them to have; they had not done any more for the support of the country, nor fought any more for the country, than those who afterwards came in, and who did not get so much. The object of this action was to take these titles out of the control of the Judiciary.

He knew many families residing in the counties of Refugio and San Patricio, the heads of which had received a league and labor; and afterwards, having been killed, their widows and orphans had gone to the United States or elsewhere for protection, for they could not reside there; and their lands have been located by individuals who intend to hold them. If the question of right in these cases is allowed to go before the proper tribunals, the Judiciary of the country, the true owners may hold their lands. If on the contrary, the proposed action is taken here, an individual may be appointed who may be a part owner of some of these claims located upon the lands of others. He was willing to have the rights of all the people whom he represented adjudicated before the proper tribunals. But he wanted no action upon the subject on the part of this Convention. The evidence could not be brought here to show whether or not certain individuals were the most proper persons to investigate the rights of others. For that reason he hoped the resolution would not be adopted.

Mr. *Brown* said: I also hope that resolution will not be adopted The several committees have now made their reports; but little remains to be done. And if the Convention will confine itself to its proper office, our actual duty will be very speedily discharged. If I understand what is meant by the Constitution of a land, it ought to be as much as possible a law for the administrators of the government, and not a law for the people. The object of the resolution offered by the gentleman from Victoria can as well be effected by the action of the Legislature as by that of this body. And if we infringe upon the rule once, and take

legislation into our own hands, upon a subject which it would be just and proper for the first legislative body hereafter to be assembled here to take into consideration, we may do it to any extent; and our Constitution, instead of forming a general rule of action for the administration of the government, will swell into a formidable code of legislation. The end proposed, if just and desirable in itself, can be as directly and effectually attained by application to the Legislature, as to this body. The subject involves several difficult and delicate questions; and, sir, in the haste in which a report might be framed and adopted by this body, in the hurry of the moment something unadvisedly to us might steal into that Constitution, which would operate injuriously upon private rights, and on that ground I will oppose it. The Legislature has the power to make provision for cases of forfeiture and escheats, and the power to impose duties upon the District Attorneys of the several Districts; and, sir, for fear of acting inconsiderately in this matter, for fear of taking away rights from persons to whom they belong and vesting them in persons to whom they do not belong, I shall oppose the resolution. No necessity calls for the immediate action of the Convention upon the subject. It may be fully provided for hereafter, and I consider that in taking up the subject we shall transcend our powers, or rather exceed the purpose for which we are sent here. That purpose is the formation of a general organic law for the government of the country, and the resolution of the gentleman from Victoria falls nowhere within the scope of that object. Questions of this kind should be shunned by the Convention. I hope we shall confine ourselves to the simple duty for which we are assembled, that of constructing an organic law for the general government of the agents of the people. In fact it would be taking an illicit advantage of parties, if this Convention should erect itself into a Judicial tribunal, and make an *ex parte* decision on their rights. These rights should be decided by fair judicial controversy, and in no other way. Shape the Constitution as you will on this subject, use the utmost precaution, and you are yet liable to impair rights: for the spirit which pursues these claimants is not a friendly one, and they have no interested advocate on this floor. There is no *justice* in this demand for a remedy from the Convention; though there is obviously great *impatience* If there be any forfeited rights, they must enure in the first place to government. If the government should remit its claim, it will be lost to them. The locations were wilfully made with all these contingencies plainly in view. The government is the party to begin the contest. It has always been, and will always be in her power to do so. Yet I know of no equity which ought to give these persons a compulsory course against the government to make it institute suits for *their* benefit. They knew when they made the locations that the government must establish its right, before they could succeed to it. You could not persuade them to become trespassers as in common cases, and let the right come up in that way, leaving out the government as a par-

ty. The general welfare should always be entrusted to the Legislature, and it furnishes strong proof against the general utility of such inquests and investigations that the Legislature has not provided for them before. I hope, if the tardiness of the Legislature to move in this matter was, as we are bound to infer, for the general welfare of the State, that it will not be hurried for the advantage of the few.—At least that the Legislature may stand untrammelled, and our country enabled to present a chaste and undistorted Constitution to the world.

Mr. *Howard* said: I shall vote against the reference of the resol u tion, as I shall vote against the introduction of any such principle into the Constitution. All who have paid attention to the discussion which has arisen upon the subject of annexation in the United States, are perfectly aware that one of the leading charges against the people of this country, is that of driving off the Mexican population, and appropriating their possessions. Whether true or false, if we insert a provision which may give color to the charge, take my word for it, it will be very difficult for this Constitution which we are about to form to pass the Senate of the United States. This point will be seized upon at once, as affording in itself conclusive proof of the justice of the charge. This action is entirely unnecessary: as this Convention has no control over the subject, which does not already belong to the Legislature. It does not come within the limits of a Constitution, and it may perhaps lead to its rejection. We should be very careful how we place anything in our Constitution violating the principles of the law of nations, invading the sanctity of private contracts, or infringing the rights of private property. You may depend upon it, that the grave Senators of the United States, learned in public and constitutional law, will examine our Constitution with great scrutiny. Every such instrument which passes that ordeal will be closely scrutinized, to see that it conflicts with none of the great principles of the Constitution of the Union, so wise, so impartial, so equitable. Texas has been peculiarly the object of aspersion and abuse; and it is well known that there is a violent political party in the Union, ready to pounce upon her the moment she presents herself for admission. This is an important crisis; it behooves us to be exceedingly careful in our action here, to respect the great principles of national law, the law of the whole world no less than of the United States, as well as the law of private property; to evince that upon all subjects we are actuated and controlled by a sense of justice and right.

The ayes and noes being called on the adoption of the resolution, were as follows:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Brashear, Clark, Cunningham, Evans, Everts, Forbes, Gage, Hemphill, Hunter, Irion, Jewett, Latimer of L. Latimer of R. R., Lewis, Lump-

kin, Mayfield, M'Neill, Moore, Parker, Runnels, Tarrant, Van Zandt, Wright, Wood, White and Young—29.

Noes—Messrs. President, Baylor, Bache, Brown, Caldwell, Cazneau, Cuney, Davis, Henderson, Hogg, Horton, Howard, Jones, Kinney, Love, Lusk, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth and Standifer—25.

So the resolution was adopted.

On motion of Mr. Van Zandt, the Convention proceeded to the consideration of the Bill of Rights.

Mr. Moore offered a preamble to be prefixed to the Constitution, which is as follows:

Preamble:—We the people of the Republic of Texas, having the right to admission into the government of the United States of America, in pursuance of a joint resolution of the American Congress, entitled, a "Joint Resolution for annexing Texas to the United States," approved March 1st, 1845.—In order to establish justice, ensure tranquility, provide for the common defence, and secure to ourselves and our posterity, the rights of life, liberty and property, acknowledging with grateful hearts, the goodness of the great ruler of the Universe, in affording us an opportunity, deliberately and peacefully, without fraud, violence or surprise, of forming a new Constitution of government, and devoutly imploring his direction in accomplishing this important object, do mutually agree with each other, to form ourselves into a free and independent State, by the name of the "State of Texas," and do ordain and establish the following Constitution.

On motion of Mr. Mayfield, the preamble was referred to the committee on general provisions.

On motion of Mr. Baylor, the Convention resolved itself into committee of the whole, on the Bill of Rights—Mr. Lewis in the chair.

In the latter clause of Article 2d, Mr. *Evans* proposed to strike out "but in consideration of public services." The committee refused to strike out.

Mr. *Forbes* proposed to insert, in the Bill of Rights, a provision that taxation should be forever uniform and equal. Rejected.

After the latter clause of Article 4th, Mr. *Lipscomb* proposed to add: "but it shall be the duty of the General Assembly, to pass such laws as shall be necessary to protect every denomination of christians in the peaceable enjoyment of their own mode of worship"

Mr. *Van Zandt* thought the subject was amply provided for in the first part of the Article. He conceived that religious denominations need no protection except that of the Almighty, it left free to worship God according to the dictates of their own consciences.

Mr. *Lipscomb* replied, that he had often seen the solemnities of public worship interrupted by the light and frivolous. Without laws for this purpose, they will be at all times liable to interruption.

Amendment made.

Mr. *Mayfield* proposed, after "rights of conscience," to insert "in matters of religion." Adopted.

Mr. *Moore* proposed to substitute for the 5th and 6th articles, the one contained in the Bill of Rights of the Republic, as follows:

"Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege.—No law shall ever be passed to curtail the liberty of speech or of the press: and in all prosecutions for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and fact, under the direction of the court."

His reasons he would briefly state. It was an admitted fact, that the press of the country should be free: free as the winds that wave our national banner. How then can it be free, unless freemen have a right to speak the truth? He only is a freeman when the truth makes free: and if he was to be imprisoned, and his hands were to be shackled, because he spoke the truth, where was this boasted freedom? The article upon the subject first adopted by the people of Texas, was one, as he considered, in consonance with the true principles of liberty.

Mr. *Van Zandt* said that the 5th article read word for word with the amendment proposed by the gentleman. That amendment differed only in the 6th section. Now he conceived that the adoption of the article proposed by the gentleman from Harris might result in great injury to the people of the country. Although he was as much in favor of the freedom of the press as any in the land, he could not concur with the gentleman to the full extent of his principles. He could not concede the right to attack the private relations of private citizens. The first article secures to all intents and purposes the liberty of the press. But if you furnish the libeller with the shield contended for, it will give rise to more strife, more difficulty and bloodshed throughout the land than the abolition of the criminal code itself. He was for breaking off all shackles from the press: yet if an editor should invade the privacy of domestic relations, he wished to see him punished. He was gratified to believe that the press of the country is now in the hands of men of moral principle, men who regard private reputation, and the peace of families. But it might not be always thus: and he thought it best to guard against the possible evils consequent upon a change in this respect. He trusted the clause would be retained in its present shape.

Mr. President *Rusk* said that he was as much opposed to slander as

any other individual. He thought it had been too much indulged in by the press: at the same time, it would not do to shackle it. The amendment is precisely the same with the report, so far as the 5th section goes. The 6th section draws a distinction between individuals in a public capacity, and in private life; and while it allows him who slanders an officer of the government, to come forward and prove the truth of his charge, it denies that privilege to him who sees proper to publish or say any thing of an individual in a private capacity. If an individual were to raise his hand against the laws of the land, to head a mob for example, however public the act might be, yet if an editor sees proper to animadvert upon his conduct, he cannot allege the truth in his defence. He believed that the law as it now exists on this subject, so far from having been a benefit, has really been injurious.

Mr. *Moore* said, that if gentlemen would investigate the operation of this single clause, they would find it most injurious. If he was at liberty to abuse a man in all his private relations while Governor, and yet could not do the same with a private individual, how much more injury would he do to the community and the country? If while a man is a candidate for public office, he is assailed, and the truth in this case is allowed to be given in evidence, if he proves the charges to be false, good is the result; and if they are shown to be true, that man does not attain the station which he would pollute. But he held it to be wrong, for an editor, when an individual was once elevated to office, to publish his faults and crimes to the world, he should rather hide them, for the reputation of the country.

Why should we go back to the days when the tithing-men in Connecticut went about whipping beer barrels for working on Sunday; to those days when the select-men decided to adopt the laws of God until they could make better? The great principles of liberty have been improved from age to age. The article which he proposed, is a credit to the framers of the first Constitution of Texas: it is creditable to Texas itself. It tends of itself to dispel the calumnies against our country. Here is the evidence that the framers of our Constitution were so pure and high minded, as to be willing that their characters should be held up to view; that the truth should be spoken at all times in relation to them. He trusted it would be ever thus in Texas: and that not only the press, but the freemen of the country would be truly free.

Mr. *Lipscomb* said he thought the age has passed by when the maxim prevailed, that the greater the truth, the greater the libel. In all the modern Constitutions, he believed, it was provided that the truth may be given in evidence. He did not think we stood in need of that shield or protection to be thrown around us, whether as private men, as public officers, or as aspirants to office. He had been disposed to exclude the limitation introduced into the report of the committee: he was for open-

ing the door wide, and permitting the truth to be given in evidence in all cases. Few are so base as to meddle with female character. And so far as he knew, female character had never gained any thing by a public investigation in a court of justice. Public opinion will do justice in matters of this kind.

Let us write what we will, being answerable to any prosecution which may be brought against us for the abuse of the privilege. He had always thought there was much good sense in the remark attributed to Dr. Franklin, that no principle was better established than the freedom of the press, but at the same time the liberty should not be sustained to cudgel those who abuse it.

He would support the article proposed by the gentleman from Harris, with one amendment. He would move to strike out "under the direction of the court."

Amendment accepted by Mr. Moore.

Mr. *Van Zandt* said he was satisfied that gentleman had not examined the subject, or they would have seen that the provision here inserted is contained in the greater number of the Constitutions which have said any thing in relation to prosecutions for libel. He would call their attention to the provisions on this subject in the Constitutions of Ohio, Indiana, Alabama and Arkansas. These are four of the new States. This is not the exploded doctrine of Pennsylvania adopted in ages past.; the framers of these Constitutions had the advantage of all the light and experience of former times.

The gentleman from Harris contends that if there is to be any discrimination, it should be in favor of men in a public capacity: that the private citizen is a legitimate object of attack to him who wields the power of the press: but so soon as he attains office, so soon as he gets into power, this mighty arm, wielded by men of influence, talents and capacity, is to fall nerveless: that the weak are to be subject to attack, and the powerful suffered to pass with impunity. He would ask if that is the doctrine of republicanism—if that is what we are assembled here to establish in this Constitution? Is it not the contrary that we should aim at, to protect the weak and defenceless: to make the strong, the proud and the powerful to feel that they occupy a common level with the common people of the country? He would say that this was one of the objects for which he came here as a member of this Convention, and not to attack the feeble and defenceless, while he should truckle to power.

It has been said by one of the gentlemen who addressed the Convention, that he had never known female character to be benefitted by investigation. He wished it therefore to be untouched; that by the sanction of no law should any one be suffered to traduce the fair character of woman. If individuals are unworthy, let the society in which they revolve direct and control them; it needs not the powerful arm of the press. The breath of suspicion is sufficient to destroy the brightest char-

acter in woman; like Cæsar's wife she must be, not only pure, but unsuspected. And he who shows a disposition of mind so impure, so unholy, and so base, as to utter calumnies against her, should never be permitted to shield himself by the investigation of the truth of his assertions.

He would not curtail the liberty of the press, but wished to check its licentiousness; and therefore hoped the substitute would not be adopted.

On motion of Mr. *Jones*, the question was divided; and the committee refused to strike out the 5th article.

Mr. *Evans* moved to strike out the last clause of the 5th section.

Refused to strike out.

Mr. *Forbes* moved to strike out the 6th section, and insert the amendment offered by the gentleman from Harris; "in all prosecutions for libel, the truth may be given in evidence, and the jury shall have the right to determine the law and fact." Adopted.

Mr. *Mayfield* moved to insert, "provided the truth shall not avail as a defence where malice or a corrupt motive is proven." Adopted.

Mr. *Mayfield* moved a further amendment: after "fact," insert "under the direction of the court as in other cases." Amendment made.

On motion of Mr. Forbes, the committee rose, reported progress, and asked leave to sit again Report adopted.

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

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Latimer of R. R., the rule requiring a separate journal of the committee of the whole, to be kept was suspended for the present; he also gave notice that he would, on to-morrow, move to dispense with said rule.

On motion of Mr Cazneau, the Convention went into committee of the whole—Mr. Cazneau in the chair.

The substitute for the 6th article of the Bill of Rights was adopted.

In section 8th, Mr. Mayfield moved to strike out "information," and insert "presentment."

Mr. *Anderson* said: by the Constitution of the Republic of Texas, no man can be arraigned for any offence without being first presented or indicted by a Grand Jury. Now the history of this country presents many cases of misdemeanors and malpractices in office, and no method is pointed out for redressing these grievances. Any man may be guilty of malfeasance in office, which at the common law is indictable, if no mode of redress is furnished by the laws of the country. I will state a case which may be in point. Suppose an individual in the discharge of his official duty, should fail to comply with the requirements of the law in

its fullest sense; and a failure to comply amounts to a misdemeanor, and together with that inflicts a serious injury upon the rights of the community, yet there is no possible method by which he can be punished; for as the law now stands, it will first require the presentment by a grand jury, by an indictment or presentment, which course, as pointed out from experience, has been wholly impotent. He will always have friends upon the grand jury. And it will always be so, unless some mode is provided more efficient than that proposed by the amendments, until information according to the common law meaning of the term shall be introduced, information as distinguished both from presentment and indictment. I oppose the amendment, because to put "presentment" in the place of "information," would place us in the same attitude we occupy now. The gentleman will not deny the existence of the evil. If he will provide any mode of reaching malpractice or malfeasance in office, I will cheerfully vote with him. I hope the section will be sustained in its present shape. It does not deny a man any great privilege; he has still the trial by jury: and it does not extend to those cases where life or liberty is concerned. I hope he will withdraw his motion and let the section stand, with its contemplated benefits.

Mr. *Mayfield* said: for myself, I am no stickler for phrases or terms. It appears to me that we should pursue the course most consistent with the general principles upon which we declare ourselves to be acting.—If I had entertained any prepossession before for the use of the term "presentment," the argument of the gentleman has convinced me of its propriety. He has given us a clear and distinct meaning for each of the terms. He tells you that "information" is a species of proceeding known to the common law, instituted by officers of the crown, for the purpose of redressing minor offences and grievances. In this country we have the good fortune to have neither crown nor officers of the crown. If, then, this proceeding under the common law belongs to the crown and the officers of the crown, of course we should discard it from a republican Constitution. By the term "presentment," we require the previous action of the grand jury before a man can be arraigned, before the crown or the officers of the crown can reach him: and the citizen has some security for his life and property. The argument of the gentleman has fully convinced me that the term "presentment" is more republican in its character, and should be incorporated into the Bill of Rights, and the term "information" discarded. Amendment rejected.

In the 12th section, Mr. Lipscomb proposed to insert, after the word "limb," the following: "nor shall a citizen be again put upon trial for the same offence after a verdict of "not guilty." " Adopted.

Mr. Evans proposed an additional section, to come in between the 14th and 15th, as follows: "no person shall ever be held liable for the debts, defaults, or miscarriage of another." Rejected.

On motion of Mr. President Rusk, the 16th section was stricken out: also, the 18th section.

In the 20th section, Mr. Lewis moved to strike out the word "proper." Stricken out.

In the 21st section, Mr. Howard moved to strike out "General Assembly," wherever it occurred, and insert "Legislature." Adopted.

On motion of Mr. Van Zandt, the committee rose, and reported the Bill of Rights, with the amendments, to the Convention, and asked to be discharged from the further consideration of the same; which report was adopted.

On motion of Mr. Van Zandt, the Bill of Rights was taken up by the Convention.

The amendments of the committee of the whole being first in order, were taken up severally, as adopted by the committee.

In the latter clause of 2d section, Mr. Armstrong of J., moved to strike out "except for public services;" which was lost.

Mr. Forbes offered the following, to come in as section 3d: "Governments being instituted for the benefit and general welfare of the people, the burthen shall be equally distributed among all classes, and taxation shall be forever uniform and equal;" which was rejected.

Amendment to article 4th, in the 6th line, after the word "conscience," insert the words "in matters of religion," was adopted.

The following was adopted, as an addition to the 4th article: "but it shall be the duty of the Legislature to pass such laws as shall be necessary to protect every denomination of Christians, in the peaceable enjoyment of their own mode of public worship."

On motion of Mr. Hunter, the word "Christians" was stricken out, and the word "religious" inserted before the word "denomination," so as to read "every religious denomination."

The Convention then proceeded to the following, offered as a substitute to the 6th article by the committee: "and in all prosecutions for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and the fact, under the direction of the court as in other cases, but the truth shall not avail as a defence, when malice or a corrupt motive is proved."

Mr. *Love* said: I am greatly opposed, Mr. President, to the amendment as adopted by the committee. It is too late at this day for any one to question the liberty of the press. But, sir, I hold liberty to be one thing, and licentiousness to be another. Now whenever you protect the press in freely investigating the the conduct of men in a public capacity, and permit the truth to be given in evidence, you do all that is necessary for the public safety. When you adopt a different rule, you only encourage licentiousness: you aid in the propagation of slander and its circulation from one end of the country to the other; you do what

in you lies to break up the peace and repose of society. What good can be subserved, what benefit arise from the publication in the newspapers of every little indiscretion which may occur in the community? Of all classes of people upon the earth, the man who stirs up strife among neighbors is the most to be despised and avoided. In private life he is excluded from society. And yet you will confer upon the public press the privilege to slander at will, when there is no possible redress, no punishment whatever, for the circulation of the vilest calumny. What right has the editor of a newspaper more than any other man to gratify his own malevolence or that of any one in this manner? You may take up several of the New York city papers, and you will find them filled in every corner with letters containing the most disgusting details of slander. For what purpose are they thus crowded? For that of catering to the morbid appetite of the public for this species of detraction it is to give them a sale, and for no other end. You may say, you can go there to sue them; but who does it? Who can afford the expense? Whereas in the other case you have only to direct your lawyer in New York to institute an action for a libel, and you may have them punished. You are told that in adopting the system which I prefer, you are abridging the liberty of the press. Sir, you are not placed on an equality with these men. Even if you indict and punish them, the rectification never goes to all the persons whom the slander has reached. I think that policy and propriety and the fitness of things require that you should hold a check over them. They have no business whatever to enter into private character; let them confine their strictures and remarks to the public officers of the government. This may be necessary; because the whole community has an interest in the subject. But I think it highly improper to permit them even to retail the truth of a man living five hundred or a thousand miles from them: because here no public interest is served. You had better appoint public censors in each county, whose business it should be to hunt up every little indiscretion, and bring it before the public. I think from every consideration of fitness and propriety, that they should be restricted at least to an honest discharge of their duties as public editors; I would not allow them the privilege of circulating slanders against persons with whom they can have no intercourse.

For myself, I have made it a rule not to notice or care for what may be said of me in public prints. It was once stated in one of them, that I was seen drunk, staggering through the streets at midnight. Now although I declare that I was never in my life drunk, I did not think it necessary to correct the slander. Many of my friends, however, felt some interest in the charge, and I received several affecting letters, imploring me not to become a drunkard. Had I been engaged in mercantile, or other professional business, the charge might have seriously affected me, and have forever blighted the fairest prospects. Now, sir, let me ask what public good was promoted by such a charge? I was

in no public office, or seeking any. Its only effect could be to inflict pain, and its only design to do a private citizen an injury. No justification should avail an editor, governed by such feelings of malevolence.

Mr. *Moore:* It does not astonish me, Mr. President, to hear such sentiments expressed by the gentleman from Galveston, knowing their similarity to those entertained by the party to which he belonged in the United States. In the days of Adams and Jefferson, that party attempted to establish a gag law, but the stern democracy of the country rose throughout the land, and crushed the futile conception in its birth. Sir, are we to be told at this day that the press is to be gagged, that editors here are to be shackled in the expression of opinion? I laugh at the conceit. The press of this country is as free as the clouds above us: it is beyond the reach of man of human laws; for the great public opinion of the country sustains its freedom. The people have said that it should be free, and free it will be. No laws that you can pass here, or that the Legislature after you can pass, can take from the editor the great privilege allowed him here. He has the right to speak freely upon every subject: but he must speak the truth. It will be recollected perhaps by gentlemen here, that I took charge of the first paper established since the formation of the government, and having been in charge of it up to this period, am regarded as the oldest editor in the country. But, sir, I cannot look back to the time when I have seen cause to regret the law contained in our Constitution asserting my freedom. It has been stated that the press of this country will bear a favorable comparison with that of any other; and why? Because it is free. And if the editor should hereafter arise, who should scatter around him the arrows of foul calumny and detraction, his paper would fall to the earth; for the people of the country would not sustain him. I did not expect again to be called upon to speak upon this subject. I had thought the battle was fought this morning, of freedom against tyranny. Freedom triumphed then, as freedom ever will triumph. Do not, I beseech you, permit this Constitution of our country to take with it the exploded dogmas of former days. The article alluded to by gentlemen in the Constitution of Ohio, was derived from the old Pennsylvania Constitution of 1790. It has crept into the charters of other States; but you will notice that the new States have adopted an amendment of this kind. And now, I believe the doctrine is considered as exploded. The wise framers of the Constitution of Texas adopted an article which gives true freedom to the press; an article which I think an improvement upon the older Constitutions. I hope the amendment may be adopted, embodying as it does the intelligence of this latter age; and rejecting the exploded doctrines sustained by the Federal party of other days; and indignantly spurned by the illustrious Jefferson, more traduced and calumniated as he was than any other distinguished man of his day. That great man, when a slanderous attack upon him was brought to his no-

tice, replied, that he rejoiced that the press was so truly free, that the officer highest in the nation might be treated with the same freedom, and censured with the same impunity as the least individual in the Republic.

Mr. *Mayfield* said: Mr. President, after the grave and admonitory remarks of the gentleman from Harris, I must confess that I feel somewhat at a loss how to address the Convention in expressing the views and opinions which I entertain upon the question now before it for determination. Never having belonged to that party in such severe terms rebuked by the gentleman, having been of that which he has so highly eulogized, and yet differing so widely from him in opinion as I do, I feel some difficulty and no little dread in giving free utterance to my opinions, lest, forsooth, I might be turned out of my political church. However dangerous and hazardous the experiment may be, Mr. President, notwithstanding the serious and solemn monitions received from him, I yet feel myself called upon by the occasion, although it should result in my entire exclusion from the political family to which I have belonged from my infancy, to express freely my opinions in relation to this question. I do not hold that these particular doctrines are characteristic of either the Federal or Democratic party. I disclaim upon my part, having been ever a member of the Democratic party myself, as one of its principles and tenets, that freedom means licentiousness and mendacity. I say also as one of its members, I disclaim the doctrine that a malicious and mendacious editor is to be permitted to fulminate his slanders at will, and more especially, with regard to private individuals. If such a tenet has obtained a prominent place in the creed of Democracy, I for one have never subscribed to so damnable a doctrine. Nor in examining the action of the various parties in relation to this subject do we find any division of sentiment. For when we look back to the Constitution of the United States, framed as it was by the collected wisdom of our ancestors, constructed by a body of the greatest men ever called together upon earth, we find the principles incorporated in that instrument to have been the result of compromise on the part of men of all parties, who came forward there and made mutual sacrifices and confessions, as we are called upon to do so upon this occasion, in order to produce something which shall be equitable and just in its results, and secure to each and every citizen the unmolested enjoyment of all his rights and privileges. In referring to the provisions upon this subject, contained in the various State Constitutions adopted from 1776, down to the present period, you will find in some of them some modifications of the principle embraced in those of that day. But, Mr. President, I will venture the assertion, you will not find any State which has formed a Constitution in modern times, even in this enlightened age, where improvement is so rapid and so great in the arts and sciences, and the principles of government, when these great and essential principles of liberty

and freedom are becoming more fully understood throughout the world, you will not find a single instance of any deliberative body going so far as the gentleman contends for in his argument. He tells us that the principle which we are now desirous to incorporate in the Bill of Rights is a relic of the damnable and exploded doctrines of the Federal party. He does not swear, it is true: but his attitude and manner clearly indicate that such was the term he intended. The gentleman argued, that the provision contained in a Constitution read by the gentleman from Harrison (Mr. Van Zandt,) was to be found in a Constitution of 1790, and was therefore exploded: that the genius of the age has discarded the principle, and freedom demanded the licentiousness of the press. If, Mr. President, his reading and his memory has kept pace with the history of the country, and certainly the reading and the memory of the conductor of a public journal, should furnish him with an accurate knowledge, not only of dates, but of facts, he would have found this principle incorporated into the Constitutions of States as free as we ever can become, as liberal and as enlightened as any. Within the last few years, some of them have adopted the very provision we are now seeking to engraft here now. In the Constitution adopted by the recent Convention of Louisiana, the features of which have generally met the approbation of the gentleman from Harris, more particularly those which are in any respect an innovation upon ancient principles, we find the same provision, at least in spirit and sentence. Similar provisions are to be found, also, in the Constitutions of Arkansas, Illinois, Missouri, Mississippi and Alabama. In Tennessee so late as 1835, the Convention of the people, which met there a few years ago, had the same subject under consideration. And they did not conceive that freedom would be lost, and the standard of liberty prostrated to the earth, unless licentiousness should be secured to the press. And the Constitution of that State has incorporated precisely the provision we seek to have in ours. Is this going back to ancient times, or reviving exploded doctrines? Nothing had arisen in that wise and chivalrous State, so late as 1835, to justify a change, such as is sought here by gentlemen. Let us read the article referred to in the Constitution of that State:

"Article 1. Sec. 19. That the printing press shall be free to every person who undertakes to examine the proceedings of the Legislature, or of any branch of officers of the government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases."

The gentleman has pointed out a portion of the declaration of the

Constitution of Pennsylvania, which he says is in the same language as contained in that of Tennessee. And hence he draws the inference that the doctrine here recognized is ancient and exploded; a doctrine so recently ratified by the sense and intelligence of the State of Tennessee. I admit its antiquity. These are principles like old wine, which improve by age. And these are great principles declared at an early period of the country, which I hope will stand as firm as the everlasting hills, and it will be regarded, I trust, as sacrilege and an abolition in the sight of any party, to seek to disturb or infringe, in the slightest degree, upon these sacred principles. Are principles to be rejected here, because they have the sanction of ages to justify them? Are they to be contemned and reviled here because our forefathers adopted and lived under them in the enjoyment of all the rights and privileges necessary to security, liberty and happiness? But we are told, forsooth, that the press of Texas has a high standing throughout the world, and has acquired that character, because the press is free. Now I had flattered myself, for the credit of the country, that there was another reason which might be given for the character and standing which our press enjoys, not only at home but abroad. I did not find it in the fact exclusively of its being free in our country, but had imagined it was, because it had been conducted by men of moral worth, integrity, and truthfulness. But we are told its high character is to be regarded as the effect exclusively of its freedom; then it is not that of the intelligence, virtue and moral worth connected with its management. Therefore, all the virtue and wisdom that may be brought to bear in the management of a public journal will add nothing to its respectability, if it is restricted in its ability to do wrong and inflict injury. We find, I think, Mr. President, taking a view of the history of the times with regard to the freedom of the press, that the first great move in relation to the subject was made by the patriots of '76. We find that it had then become necessary; the reason and cause of the English law being incompatible with the principles of free government, asserted by our ancestors, consonant as it was with the existence and maintenance of monarchies and aristocracies in countries like England, from which, in some degree, our law on the subject was derived. There it was a matter of political wisdom, if not of necessity, that the press should be shackled, in order that the rulers of the people should not too often exhibit their private or public conduct before the masses whom they were to govern. Having then been held and first declared to be free by our fathers, the press soon obtained a greater latitude. Free discussion was allowed of the conduct of the Legislature and public officers; and in such cases it was determined that the truth might be given in evidence in a prosecution for libel. But, I would ask, who is willing to license the press to discuss private character in all its relations? What, sir: shall I be told, in the case of a man who would stoop from his high station to cast a stain upon female character, to slander a wife, a sister or mother, or a friend in an obscure walk of

society; to drag her before the public gaze; to publish to the world every peccadillo or misdeed in her history; or that there is any redress when the vile calumniator can step forward in a court of justice, and justify the wrong he has inflicted upon society: when he can say he is prepared to prove the truth of the allegations? Shall we be told to sue these persons, whose publications are so deleterious to public morals and the peace and good order of society? These very editors may not be be worth a groat; and where then does the "club of the law" end? Where is the redress spoken of by gentlemen? This state of things leads to a further infraction of the laws of society; it leads to murder and assassination. And let me ask what is the public advantage? In what respect does it benefit public morals: in what degree the cause of religion, or public policy? In what manner is the cause of freedom and liberty throughout the world to be promoted by allowing an editor to publish truths, even with regard to the relations of private life? If any great end can be subserved by a license of this kind, in God's name let each man who may choose to set himself up as an editor discuss and scan every private act of our lives. But will any good end be promoted in the slightest degree, by a latitude of this kind? No, Mr. President. It is the mendacity and licentiousness of the press at the present day, which inflicts the most serious injury upon the morals of society. Then is there any thing improper or unjust in a restriction of this kind, which simply prohibits the indulgence in reflecting upon the conduct of persons in the relations of private life? For myself, I can see nothing. By adopting the section as reported by the committee on General Provisions, no injury can result to any one; and no possible good can result from the latitude insisted upon by the gentleman from Harris. And I conceive that neither for my vote nor for the remarks I have made will information be filed against me to terminate in expulsion from my political church.

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

Wednesday, July 16, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Clark, from the committee on Education, made the following report: