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:

Committee Room, July 16, 1845.

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

The committee to whom was referred that part of the Constitution which relates to the subject of Education, have had the same under consideration, and ask leave to submit the following report.

(Signed,) EDWARD CLARK,
Chairman.

Art. 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature, in all future periods of this State, to make suitable provisions for the support and maintenance of public schools.

2d. The Legislature shall, as early as practicable, establish free public schools throughout the State, and shall furnish means for their support, by taxation on property; and from and after the year eighteen hundred and fifty, it shall be the duty of the Legislature to set apart one-tenth of the annual revenue of the State, as a perpetual fund—the interest of which, at six per cent. per annum, shall be appropriated to the support of free public schools; and no law shall ever be made directing said fund to any other use.

3d. All public lands which have been heretofore, or which may hereafter be granted for public schools, to the various counties, or other political divisions in this State, shall not be alienated in fee, nor disposed of otherwise than by lease, for a term not exceeding twenty years, in such manner as the Legislature may direct.

Which report was laid on the table one day for consideration.

The special Finance committee to whom was referred a resolution, instructing them to enquire into "the amount of money which can be collected by a reasonable rate of taxation; and what amount will be sufficient to support a State government for the first year," made the following report:

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

The select committee, to whom was referred a resolution instructing them to inquire into "the amount of money which can be collected by a rate of reasonable taxation, and what amount will be sufficient to support a State government for the first year," have had the same under consideration, and have instructed me to report:

That, in the present incomplete condition of our State Constitution from the best data in the possession of the committee, the necessary an-

nual expenses of the government of the State of Texas, will probably be something like the following estimate:

3 Judges of Supreme Court,	$2,000	$6,000	
6 District Judges,	1,500	9,000	
6 District Attorneys,	300	1,800	
Contingent Expenses,	500	500	
Annual expense of Judiciary,		$17,300	$17,300
Governor,	$2,000	$2,000	
Secretary of State,	1,000	1,000	
Comptroller,	1,000	1,000	
Treasurer,	1,000	1,000	
Attorney General,	500	500	
Contingent Expenses,	500	500	
Annual expense of Executive Department,		$6,000	$6,000
60 members of the Legislature, at $3 per day,		$10,800	
Mileage,		3,000	
6 Clerks, at $3 per day, each,		1,080	
4 Door-keepers and Sergeant-at-Arms,		720	
Contingent Expenses,		1,200	
Contingent Printing for both Houses,		1,000	
Printing Laws and Journals,		2,500	
2 Chaplains at $3 per day,		360	
Expenses of the Legislative Department,		$20,660	$20,660
Pension to Col. Neal,		$200	
" Joseph Cecil,		300	
" M. J. Garcia,		100	
Amount of Pensions,		$600	$600
Annual expense of the State Government,			$44,560

Your committee have, purposely, omitted to take into account, in this estimate, the expenses of the General Land office. They believe that that office can be made, and the situation of the country imperiously demands that it should be made, to defray its own expenses. In this way, every man would contribute to the support of that office, in proportion to the interest he has in it.

The committee have, also, endeavored to make an estimate of the probable revenue, from which the expenses of a State government are to be defrayed; and, by comparing the returns of the Secretary of the

Treasury, for the years 1843 and 1844, (the only data in their possession,) they arrive at the following conclusion, as to the probable amount of direct and license taxes, for the ensuing year, at the rates now established by law, viz:

Specific tax,	$19,756 88	
Ad valorem tax,	22,736 64	
Poll "	4,000	
License "	5,000	
	$51,493 52	
From which deduct collecting,	4,000	expenses of assessing and
Balance,	$47,493 52	

The committee would remark, that the specific tax on most articles, on which specific tax is laid, is equal to about one-fifth of one per cent.; and as we will, probably, adopt an article in our Constitution, requiring that taxation shall bear equally on all kinds of property, it will be necessary (or at least proper,) to raise the tax on land, which is now only one-tenth of one per cent., to one-fifth of one per cent., to produce the contemplated equality of taxation. This, from the best calculation we can make, would augment our revenue about eighteen thousand dollars; which, added to $47,492 52, would make an aggregate of sixty-five thousand four hundred and ninety-two dollars fifty-two cents.

Under the operation of the law now in force, the direct tax has proved a very precarious source of revenue—not more than an average of one-half having heretofore been collected; and as Texas, when she becomes a State, must depend entirely on that source of revenue, your committee would suggest the propriety of making some constitutional provision which will ensure a more prompt and efficient collection in future.

J. B. MILLER, Chairman.

500 copiess of said report were ordered to be printed.

Mr. Lewis offered the following resolution:

Resolved, That the following mode of revising, reforming, or amending the Constitution, be referred to the committee on the Bill of Rights and General Provisions:

Mode of revising the Constitution.

When experience shall point out the necessity of amending the Constitution, and when a majority of all the members elected to each house of the General Assembly shall, within the first twenty days of their stated annual session, concur in passing a law, specifying the alterations intended to be made, for taking the sense of the good people of this State, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other returning officers, at the next

general election which shall be held for representatives, after the passage of such law, to open a poll for, and make return to the Secretary of State for the time being, of the names of all those entitled to vote for representatives, who have voted for a convention; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for a convention, the General Assembly shall direct that a similar poll shall be opened, and taken, for the next year; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for a convention, the legislature shall, at its next session, call a convention, to consist of as many members as there shall be in the House of Representatives, and no more—to be chosen in the same manner and proportion, at the same places, and at the same time, that representatives are, by citizens entitled to vote for representatives; and to meet within three months after the said election, for the purpose of adopting, amending, or changing this constitution: but if it shall appear, by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives, did not vote for a convention, a convention shall not be called.

Which resolution was referred to the committee on General Provisions.

Mr. Forbes offered the following resolution:

Resolved, That the committee on General Provisions of the Constitution, be instructed to inquire into the expediency of prohibiting the passage of any law taking away, or altering, the legal remedy for the collection of debts, which was in force, and in operation, at the time of the creation of the debt; and that the said committee report to the Convention as early as practicable, the result of their inquiry.

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

Mr. Parker offered the following resolution:

Resolved, That the Convention will go into the election of a printer, to print the journals of the Convention, on the day of inst., at 11 o'clock, A. M.

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

Mr. *Howard* said that he held in his hand a translation into Spanish, of the ordinance of this body, accepting the proposition of annexation, and the resolution relating to the United States' troops, which he presumed to be correct. At the request of his colleague, Mr. Navarro, he would move to spread them upon the journals. He concurred in the propriety of this course for various considerations, which would at once suggest themselves to the Convention. Gentlemen are aware that foreign interference has taken place on the question of annexation. Every species of exertion will be made to mislead the public mind of the Mexi

can people upon our frontier; especially in relation to the objects of inviting troops from the United States to take possession of the country. It was, therefore, he thought, important to provide against these efforts by the publication of these resolutions in the Spanish language. He was confident that if the Mexican people were left to themselves, and understood correctly the true bearing of these measures, we should find them with little or no division, in favor of annexation. From what he had seen of the Mexican population in the west, he was satisfied that there was no population in Texas more desirous for annexation. They are tired of the serious vexations to which they have been subjected by the Mexican government. It is therefore important that they should have early and correct information with regard to the precise character and effect of annexation, and more especially with regard to the introduction of troops into that territory. There can be no doubt that the government of Mexico will suppress the resolutions, and spread abroad distorted statements of the facts.

Mr. *Kinney* said that he concurred most fully with the gentleman from Bexar, in his views with regard to the necessity that these resolutions should be spread upon the journals in the Spanish language. Very many will come here to examine the records of the country. And gentlemen are all aware that the largest number of the citizens of the western country, are Mexicans, and unacquainted with the English language. He hoped, in addition to the adoption of the motion of the gentleman from Bexar, that there would be a thousand copies published in the Spanish language, for the information and satisfaction of his constituents among others. He believed, that if the state of affairs were properly understood by the Mexican citizens, not one of them would be found opposed to the project of annexation to the United States. Whereas, if they should see the United States' troops coming among them, without knowing the object, it might create a suspicion that all was not right. He would therefore move that a thousand copies of these resolutions be published and distributed.

Mr. *Brown* said that he apprehended there would scarcely be a single vote against the proposition. He represented a county containing no Mexicans; but inasmuch as many of the Mexican citizens in the west will be taxed for the information of the eastern people, it was but an act of reciprocity that these resolutions should be translated and published for their satisfaction

The ordinance and resolution referred to were ordered to be spread upon the journals, in the Spanish language, and 1,000 copies were ordered to be printed.

On motion of Mr. Wood, Messrs. Darnell, Caney and Armstrong of J. were added to the committee on General Provisions.

The Convention proceeded to the

ORDERS OF THE DAY.

The substitute for the 6th article of the Bill of Rights, offered by the committee of the whole, was taken up.

Mr. Davis moved to strike out all after "fact."

Mr. Armstrong of J., said he should vote against it. He would be willing to support it, if it retained the words "under the direction of the court." That is the most important feature. If gentlemen want every thing tried by a jury without a court, let them make such a general provision in the proper place.

Mr. Davis then moved to strike out all after the word "cases."

Mr. *Van Zandt* said: I had hoped, Mr. President, that there would have been no necessity of a prolongation of the discussion upon this subject. But as one of the gentlemen (Mr. Moore,) opposed to the provisions recommended in the report of the committee has seen proper to take a wide range, and has introduced here, subjects unconnected and foreign to the true issue before us; as the chairman of that committee and the organ through which the report was made, I deem it my duty to ask the indulgence of the Convention while I make a brief reply to a few of those assertions.

I am glad that the gentleman from Liberty (Mr. Davis,) has made his motion to strike out the remainder of the section. It presents again the original proposition of the gentleman from Harris, which I wish to see presented to this body in all its naked deformity, unclothed and stripped of the disguises with which the somewhat salutary amendment of the gentleman from Bexar has invested it. The question before us is one simply directing the manner of trials for libel, and involves no principle of a direct interference with the liberty of the press. Nor can the cause of liberty itself or free discussions be promoted by the course of debate pursued by the gentleman from Harris. It has been the practice of demagogues in all ages, to attempt to fasten upon either the advocates or opponents of particular measures the odium of names belonging to the history of times past, thinking thereby they may drive from their positions the weak and wavering. The course of the gentleman from Harris has never, on any former occasion, to my knowledge, proved him worthy of such an appellation, and whatever inferences may be legitimately drawn from the course of his remarks on yesterday, I hope in all charity his intentions on that occasion were not such as to entitle him to so unenviable a distinction. But whatever may have been his intentions, his words seemed to indicate a design to cast upon the supporters of the principle contended for by the committee, the charge of advocating the doctrine of Federalism, denouncing their opinions as the offspring of the alien and sedition laws, and as the tenets of a celebrated convention which met in one of the Northern States, which adopted resolutions repugnant to republican principles. If there were any grounds upon which to base these charges, those to whom they are intended to be

applied, might well shrink from their positions. But I think I shall not only be able to show their entire falsity, but that if applicable at all, to any one, the reverse of the position is true. The substance of the clause reported by the committee, has been embodied in the constitutions of a large number of States of the Union, and received the sanction of the wisest and ablest of her Statesmen.

I have made a short examination of the facts of this matter. Let us see how they stand, and ascertain where the gentleman's beau ideal of unsullied liberty and republicanism had its origin. In what bill of rights do we find the clause so strenuously contended for him? Do we find it in the bill of rights of Virginia, framed and readopted by the ablest deliberative body which ever assembled in State convention? Do you find it in any of the great western States, save one, or is it to be found in those of the sunny south? No, sir. It is the nursling of Connecticut, the State which gave birth and being to the Hartford convention, and which furnished the strongest advocate of the alien and sedition laws. From thence came the darling bantling of the gentleman from Harris, and which he would palm off upon us as the choicest gem of democracy. In none of the State constitutions then I assert can it now be found, save Connecticut and Missouri. The gentleman says Mississippi, but I deny the fact. The clause referred to, is very similar to the amendment offered by the gentleman from Bexar. I will read it. "In all prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter alleged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the facts." I ask you then, sir, if that is the amendment propos d by the gentleman from Harris? (Here Mr. Moore rose, and read from a constitution of Mississippi, a provision similar to that adopted in the constitution of Texas.) What is the date of that? (Mr. Moore answered, 1817.) Then it proves to be the discarded principle of the people of that State. We find, in framing the new constitution of Mississippi, after the test of fifteen years experience under the old clause, they saw the necessity of change, and consequently, added the amendment made, which, though, covering some of the objections of the original clause is yet imperfect. The gentleman appears to have gathered all his ideas from discarded theories and obsolete books. The States which have adopted the substance of the clause recommended by the committee are Maine, and Pennsylvania. But the gentleman says *it is the untiquated* doctrine of Pennsylvania. It is true that that time honored and peace loving State, in 1790, incorporated it into her constitution, but after forty-eight years experience, in 1838, we find her with all the lights of experience before her adopting the same clause again. But to proceed with the Catalogue, Delaware, Ohio, Illinois, Indiana, Kentucky. But as particular allusion has been made to Kentucky, where has she ever been found wanting, when the in-

stitutions of liberty were endangered, or when the tocsin of war was sounded? Was she found by the side of *Connecticut*, denouncing the war of 1812; or were her brave riflemen among the foremost to meet upon the northwestern frontier and the banks of the Mississippi the invading foe? Were her gallant sons who adopted the principle recommended by the committee, then to be denounced as Federalists, and enemies to the freedom of the press? Tennessee has twice adopted a similar provision. The second time in 1835. But as the gentleman wishes to strike those who advocate it from the ranks of democracy, let us see who were the framers of the constitution of Tennessee. Was Andrew Jackson there? Yes, sir! And in the full meridian of his mighty genius. And does the gentleman rise in his place and denounce him as a Federalist in his day? Andrew Jackson a Federalist!! I must attribute the fault of the gentleman to an error of judgment alone, for I have long known his veneration for the departed Hero of the Hermitage. Lousiana, Arkansas, and Alabama have adopted like provisions, and where do you find more genuine republicanism or greater freedom of the press than they illustrate? If, then, the gentleman's argument and assertions prove any thing, it is that he, though born as he asserts, in the region of Franklin, has imbibed Connecticut principles, and if any one deserves the appellation, of Federalist, on account of his views upon this subject, he himself is prominently entitled to it. But as he declares himself to be a true democrat, if he will only abandon a few of his political heresies, I, for one, am not disposed to cast him out of the church.

There is no member of this body, Mr. President, who would go further to establish the freedom of the press than myself, holding at the same time those who improperly exercise that freedom to a strict accountability. The 5th section which we have just adopted, proves the intention of the committee forever to protect it. If it could be made to appear that any thing contained in the clause under consideration had a tendency to place an improper restraint upon it, I would ask it to be rejected; but I can come to no such conclusion.

A summary of the action of the other States, thus shows that ten States have adopted the rule recommended by the committee; two the proposition supported by the gentleman from Harris, and two that of the gentleman from Bexar. The other twelve, whose constitutions are before me, have adopted substantially the provisions contained in the section already adopted, leaving the common law to act in full force in the trial of libels. Let us then profit by their example and experience, furnishing as they do, abundant testimony of the necessity of establishing the security of the private citizen from oppressive and unnecessary inquisition.

Again: the gentleman from Harris based his argument, in part, upon the adoption of the principle for which he contended, by the framers of the constitution of Texas. But, sir, under what circumstances was that adopted? Withcool calmness and deliberation, in the absence of fear or

hurry? No, sir. That convention embraced a good share of wisdom and talent, but the result of their action, under the circumstances surrounding them at the time, is entitled to no great degree of consideration here. Daily expecting the Mexican foe, they had no force for their defence. Your small band of patriots was retreating before the enemy; and the convention broke up suddenly, and retired beyond the Brazos.

I would not diminish the liberty of the press: I would have it as free as the winds of heaven; I would put no clog upon it. But let this liberty be employed with discretion. You give every one the right to bear arms for his own defence: but does it follow that he has the right to slay his neighbor in all cases?

The object of all government is the peace and good order of society, and whatever is calculated to stir up strife, to promote quarrels and cause bloodshed, should surely be curbed as much as possible. The gentleman has referred to Mississippi. What has been the result there of this unrestricted liberty of the press? It has resulted perhaps in some good: it has killed off at least half a dozen editors, I speak ironically: but the history of the press in that State may furnish us with an instructive lesson. Human nature is human nature, and ever will be the same. Solomon says: "the words of the tale-bearer are as wounds." Let us take counsel of the wisdom of the past, and, while we secure the rights of the private citizen, let us at the same time leave the press free and unshackled.

Mr. *Howard* said, I regret, Mr. President, the necessity of saying something upon this subject, as one of the amendments was offered by me; and I shall do so with all possible brevity. It is easy to indulge in declamation upon liberty, but to understand the principles of liberty, and to know the measures necessary to its security, is a somewhat different matter. Sir, what is the liberty of the press? We have heard a great deal said about it here, but no one has attempted to define it. I will not give you my own crude definition, or the speculation of my own breast; but those of the wisest sages, of the most enlightened jurists and statesmen. The liberty of the press, then, is defined to be the right to publish our sentiments and opinions unrestrictedly, being afterwards responble for the abuse of that right. That is the liberty of the press, and I say it without the fear of contradiction: gentlemen are not able to find one jurist or statesman who has defined the liberty of the press as the right of publishing without responsibility under all circumstances. And it would be most extraordinary if they could. One of the principle objects of government is to protect the liberty of the person and property. But would a government be perfect, would it answer the ends for which it is created, if it did not protect reputation and character also? Are we to say that reputation is less dear than property? To a high-toned man it is dearer than life itself.

We have heard a good deal of declamation about the antiquated doc-

trines of the common law, and the tyranny of English decisions in relation to the press. It comes with a very poor grace from Americans. The liberty of the press, like almost all the principles of liberty, is the growth of English culture; it first took root in English soil. What light does history throw upon the subject? When printing was first discovered, it was considered entirely an affair of state, and its regulation was confined to the crown. This jurisdiction in England, in process of time, was placed in the star chamber. There it remained until the revolution, and the long parliament in 1641, in the time of Charles the First, when it was assumed by the parliament itself, which exercised it until the restoration of Charles the Second, soon after which, the censorship was revived by an act of parliament, which continued in force until 1694. But in the mean time, the English mind became aroused upon the subject, and the act was allowed to expire, by its own limitation. Upon that negative basis the freedom of the press rested: and thus it remained, until the passage of the act which gave juries the right to determine the fact and the law, as in other cases. The rights of the press were freely discussed and defined upon the trial of the publisher of Junius, and more recently in the speeches of Erskine, some of which, for variety and purity of principles, for profound thinking and masterly eloquence, are unsurpassed by any thing of the kind since the days of Cicero. And what were the principles established by him? For what principles did Junius contend? That every man in the discussion of public affairs, had the right to publish what he should think proper, being afterwards responsible for the abuse of the privilege. This was the doctrine of Junius; this the doctrine of Erskine. Thus stood this right previously to the American revolution. Now what is our own history upon the subject? When the American Union was framed, the English principles upon the subject of libel were the principles of this country. In 1798, that measure occurred which cut so large a figure under the administration of Adams, of punishing editors for their comments upon the conduct of the President, members of Congress, and officers of the government. And here let me remark, by the way, it was not so much the exercise of the power as the odious manner of its exercise, which produced the excitement. Jefferson opposed it, rallying around him what was then called the democratic party. Now, for what principles did Jefferson contend? For the right to publish whatever a man pleases, without any check? Did he say that the liberty of the press excluded the idea of responsibility? I have never seen from the pen of Jefferson the expression of any such sentiment. There has never been an intimation in the whole course of the history of the subject, that a man should have the right to publish what he pleases, without being afterwards responsible. It has, indeed, been constantly contended, that no censorship should be exercised over a man as to what he should publish: but if he should publish what is improper or injurious, it has been unanimously admitted that he should be held responsible. Thus for

the principles of English law. American principles go a step further: and now we come to the doctrine of Jefferson and democracy: for though

I must say I disapprove of this talk about democracy here in reference to parties in the United States. I use it as a general and not as a party term. "In all prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, the truth thereof may be given in evidence." That is the principle for which Mr. Jefferson contended when he went into power; that in the investigation of public affairs and the conduct of public men, the press should have the right to publish what it pleases, with no other limit than that of the truth.

But with regard to private life, a different principle has been maintained by every American statesman of any influence. To that extent I will go. I would propose to amend, by adding, after the word "evidence," the following: "but in other cases the truth shall not avail as a defence, unless published from correct motives and for purposes of public good." What is the only difference here? One party contends that in private affairs, the truth should be published at all times, without regard to public good or convenience, and that if the truth is made out, it should be an ample protection. Now I deny that there is any such principle known to the law. I maintain that it would be destruction of the liberty of the press itself: for liberty means restraint; the protection of the right, and the restraint of the wrong. Now is it right under all circumstances, that the affairs of private life should be published to the world? I have only to refer to the present condition of the American and English press, to show the propriety of the law as it now stands. Look, for instance, at the city of New York. We all know what a species of thraldom one single press has attained over that city and State, by ferreting out the most secret matters, and publishing them to the world. As a principle is better illustrated by examples than in any other way, I will mention a fact. A few weeks ago, I took up a New York paper, in which a letter writer gave an account of a party at which certain young ladies, designated by their initials, were present. It was said that the Misses so and so were at the party: that they were rich, graceful, accomplished and interesting: but, concludes the letter writer, it would be well enough, perhaps, for these young ladies, who hold their heads so high, to remember their origin: their mother was Mrs. so and so, who made a slip with count so and so, when he was in this country; she afterwards married the father of these young ladies, and has led a virtuous life ever since; but such is their true history.—Now I ask if it was proper to make these facts public? In the first place, was it just to the lady who committed the fault: if by a life of virtue she had since retrieved it, why needlessly drag her before the public gaze, without any possibility of subserving the public good, or conducing to public benefit? But if just to her as a punishment, is it right that

the innocent members of her family should thus needlessly be held up to public scorn and ridicule, and their fortunes in life perhaps forever blasted, by an impudent caterer for the love of slander inherent in the human breast? I look upon such a person as an assassin in the dark, too vile to move in the face of day. Discuss public affairs as fully as you will; handle public men with what severity you choose; subject them to the keenest scrutiny: but let the liberty stop there. If an individual is guilty of a great outrage, it may be necessary and beneficial to the public to publish the facts: but in such cases ample protection is afforded. It is an old adage, and a true one, "the truth may not be spoken at all times:" there are many things which need not be told. I say, then, that the government which fails to protect character from unjust and unprovoked aspersion, is as imperfect as one that fails to protect life. The one is as dear as the other, and ought as much to be placed under the protecting shadow of the law. By nothing that we can do here, could we hope to prevent the licentiousness of the press to any great extent. But I am not willing, in the fundamental law of the land, to offer a reward to licentiousness. I would at least inculcate a moral; whether it can be practically enforced or not, is no business of ours. The danger to the people and the press itself, is from its license; there is no adequate remedy, but this is the only one in our power. It is not my purpose to declaim here about the glorious principles of the press: God knows it has privileges enough. And many a man, while declaiming in the name of democracy, has stabbed liberty to the heart. Who were louder in eulogizing liberty than Robespierre and Marat; yet who did more to sap its very foundation in Europe?

Let us understand the import of the principles which we are adopting. The article as it stands in the report, leaves it to the legislature to say whether or not it shall be competent to permit the truth to be given in evidence, in case of publications relating to private affairs. I propose to control the legislature in that respect. I think some restraint would be salutary.

Mr. Davis withdrew his motion

The question was put on concurrence with the amendment proposed by the committee of the whole, and the amendment was rejected.

The amendment of the committe to the 12th article, after the word "limb" insert "nor shall a person be again put upon trial for the same offence, after verdict of not guilty," was read and adopted.

The question was taken to strike out the 16th section, as amended by the committee, and lost.

The amendment of the committee to strike out the 18th article, was adopted by the Convention.

The amendment of the committee to strike out the word "proper" in the fourth line of the 20th article, was adopted.

In 21st article, the proposition of the committee to strike out the

words "General Assembly," wherever it occurs, and insert "Legislature," was adopted.

Mr. Howard offered the following amendment to the 6th article, to come in after the word "evidence:"

"But in other cases, the truth shall not avail as a defence, unless published from correct motives, and for purposes of public good."

Mr. Mayfield offered as an amendment to the amendment of Mr. Howard, the following:

"And in all publications injurious to female reputation, the facts thereof shall not be enquired into; but shall be deemed false and libellous;" both of which were adopted by the Convention, by the ayes and noes as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Brown, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Love, Lusk, Mayfield, M'Neill, Miller, Navarro, Runnels, Smyth, Standefer, Tarrant, Van Zandt, Wood, Wright and Young—33.

Noes—Messrs. Armstrong of J., Bache, Brashear, Burroughs, Caldwell, Everts, Forbes, Gage, Hemphill, Henderson, Howard, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Moore, Parker, Power, Rains, Scott and White—23.

Mr. Forbes offered the following amendment to the 6th article; insert after the word "capacity," in the third line, the words "or seeking and canvassing for public office;" which was rejected.

Mr. Brown moved to reconsider the vote on the adoption of Mr. Mayfield's amendment to the 6th article; which motion was lost.

Mr. Lewis offered the following substitute to the substitute of the 6th article:

"In prosecutions for the publishing of papers investigating the official conduct of officers, or men in public capacity, or where the matter published is proper for public information, 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 courts."

Mr. Mayfieled offered the 19th section of the Tennessee Constitution, as a substitute to Mr. Lewis' substitute, which read as follows:

"That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch or office of 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 direct on

of the court, as in other cases;" which was adopted as a substitute for the substitute.

Mr. Cunningham moved to adjourn until 4 o'clock, P. M. Lost.

Mr. Evans offered the following, as a substitute to Mr. Mayfield's substitute:

"No citizen shall ever be punished for speaking, writing, printing, publishing, or circulating his opinions, on any subject, either by civil suit or indictment; unless malice be proven or implied:" which was rejected.

Mr. Gage called for the previous question, which was carried—the question being on the 6th article as amended.

Mr. Moore moved a reconsideration on the previous question; which motion was lost.

The 6th article, as amended, was then adopted by the Convention.

Mr. Mayfield offered the following amendment to the 9th article, 6th line: after the word "prohibit," insert the word "bail;" and after word "found," in same line, insert the word "upon;" which was adopted.

Mr. Anderson moved that the Convention adjourn until 4 o'clock, P. M. Lost.

Mr. Armstrong of J., offered the following amendment to the 13th article: after the word "made," in second line, strike out all the article, and insert "and no person's property shall be taken or applied to public use, without adequate compensation being made, unless by the consent of such person;" which was under consideration, when, 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.

Mr. Armstrong's amendment to the 13th article being under consideration.

Mr. *Armstrong* of Jefferson said, he thought the necessity apparent of changing the phraseology, if not of striking out: so as not to leave points undetermined which it is intended to establish. The terms used in the report were liable to dispute at the best.

Mr. *Hemphill* said he should be opposed to that part of the amendment which says that compensation shall be *first* made before the property is taken. It does away with the whole benefit of the provision.—It is very well known, that for any purpose of public policy, or utiltity, it is necessary that private property should be taken without any compensation at the time, leaving it to the honesty and justice of the government to make it afterwards. All persons at all acquainted with military operations in this country up to this time, well know the necessity that frequently exists of making use of private property, cattle, horses, pow-

der and lead, and any other articles necessary to the success of the forces in the field. If you, for instance, Mr. President, (he continued,) had a thousand men under your command upon the Rio Grande frontier, in a state of starvation, it would be impossible, under this provision, to appropriate cattle, unless able to pay for them at the moment. Or, if in command of this hill, at this time expecting an attack from the enemy, it would be impossible for you to destroy the houses in the neighborhood, if you wished to do so for the purpose of preventing the enemy from making a lodgement, until you had paid the owners of the property. It might be supposed there would be no difficulty in destroying such property. But if there were some danger in the attempt, and you were to confide the duty to some Colonel or General, it is possible he might find the command unconstitutional.

This provision is novel in itself. The terms employed in the Constitution of the United States and others are these: "nor shall private property be taken for the public use without just compensation."

I agree with the gentleman from Jefferson in the propriety of his amendment, with the exception of the part I have referred to, which I would suggest should be stricken out.

Mr. Armstrong accepted the amendment.

Mr. Anderson proposed an amendment to the amendment, to insert "or a sufficient indemnity given." Rejected; and Mr. Armstrong's amendment adopted.

Mr Caldwell moved to strike out "unless by the consent of such person." The Convention refused to strike out.

Mr. Evans offered the following, as a substitute for the 2d article: "all citizens have equal rights: and no man, or class of men, is entitled to exclusive, separate emoluments or privileges." Rejected.

Mr. Evans moved to add an entire new section between the 14th and 15th, as follows: "no person shall ever be held liable for any promise to answer for the debt, default, or miscarriage of another." Rejected.

He then proposed, as a substitute for the 20th section, the following, to wit: "the right of citizens to assemble in primary meetings and instruct those invested with the powers of government tending their common good, shall remain inviolate." Rejected.

Mr. Scott moved to strike out the 14th section, for the purpose of inserting as a substitute: "the person of a debtor, when there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law." He said that if he understood the import of the section as it stands, no man, however fraudulent, can be held to bail, even; but may go off before the eyes of his creditors. Many such persons, if compelled to give in a schedule upon oath, might disgorge, and the honest creditor would get his debt.

The Convention refused to strike out.

Mr. Scott moved to amend, by adding "in consequence of inability to pay."

Mr. Mayfield proposed a substitute for the amendment, as follows: "except in cases of public officers, executors, administrators, or guardians, who shall be found in default upon a settlement of their account as such."

Mr. *Henderson* said he was in favor of both the amendment and the substitute. He was as much opposed as any member here to imprisonment for debt. If neither is adopted, fraudulent debtors, if they choose may conceal their money, or place it in their pockets, and although they may have thousands, the honest creditor is without remedy. But, if the amendment of the gentleman from Montgomery (Mr. Scott), is adopted, it will have this effect: If a man can show his inability to pay, as he can do if honest, then he cannot be imprisoned; and I would ask if there is a man in this house who would not wish to see that the law?

Is there any man who would wish on the one hand to protect him who would fraudulently conceal his property against his honest creditors, or, on the other, to imprison the innocent but unfortunate man who is unable to pay? Again, he who defrauds the public treasury, ought certainly to find no protection in this Constitution, and he who enters upon a trust should be forced to discharge it with fidelity.

Where is the hardship or injustice of forcing him who has the means to pay to perform his contract?

If the amendments of the gentleman from Fayette and Montgomery could be placed in such a shape as to embrace the two objects he had in view, he would cheerfully sustain both.

Mr. *Mayfield* said, if he could, consistently, with the views he entertained upon the subject, adopt the suggestion of the gentleman from San Augustine, it would afford him great pleasure to do so. But he apprehended from the tenor of his remarks that the gentleman and himself differed in opinion as to the ends to be attained by the resolution. He himself entertained the doctrine, and maintained the opinion, that the experience of the present age has clearly decided the impolity and barbarity of imprisonment for debt. It was likewise his opinion that the experience of the present age has manifested very clearly to the world the great errors as well as evils and the injury to the body politic, arising from the general extension of what might be termed the credit system. Neither on this occasion nor any other was he disposed to disguise his sentiments, or to seek indirectly what he would not directly strike at. He believed that public policy demands the restriction of this universal system of public credit. He believed that the enlightened experience of the times has shown, beyond a question, the great evils arising from this system to individuals in their private relations as well as to communities and political bodies. At all events, the question is scarcely any

longer mooted. But the humanity of the age demands that man should not be imprisoned for debt; that this ignominious punishment should attach only to crimes, and not to a mere moral dereliction. It is insisted upon, however, that if the acts of the debtor are fraudulent, if he pockets the money due, and runs away, the law or its officers should reach him. Because, forsooth, he has violated a private trust, or been guilty of a simple breach of confidence betwixt man and man, he is to be immured in prison, and all the consequences of crime are to attach to him and his family. He (Mr. Mayfield,) should still maintain his present opinion upon the subject, until the laws should declare such acts to be absolutely criminal in themselves. The age has said that the punishment due to crimes shall not be inflicted for acts like these, until legislation shall have given them that designation. It is not necessary for the order of society, or the organization of government, that these trusts should exist betwixt man and man. These evils are only induced by a system which he apprehended to be erroneous in itself, and entirely unnecessary in a correct political organization of society. But as regards the class which he sought to exempt from the benefits of the section, they are a class which public policy calls into the public service; a class which no human ingenuity has as yet devised the means of dispencing with: because public officers whatever their corruptions or malfeasance, are absolutely necessary to the due execution of the laws and administration of the government. There must be such officers vested with certain given and defined powers. We are likewise compelled, by the very organization of government, to have men upon whom shall be imposed certain fiduciary trusts, for the performance of which they do not become directly amenable to the contracting party with whom they are not in immediate relation, as the man to whom you entrust your pocket-book or money, who may violate your confidence, and run off. But the law places them there: public policy places them there. And, inasmuch as the contracting party has nothing to do with placing them in the position they occupy, public policy should at all times hold them to a rigid and exact accountability. So far as executors, administrators and guardians are concerned, those whom they may have the power to defraud, have had no voice in their appointment. As to public officers, it may be said they are not in the same position. But public policy and convenience demands their creation, and they are under the highest obligation to administer that which comes into their hands in good faith, honestly and justly: in defalcation of which, let the heaviest penalties of the law fall upon them.

Mr. *Henderson* said that he fully agreed with the gentleman from Fayette, so far as to the necessity of incorporating his own propositions. But unless you add, also, the clause proposed by the gentleman from Montgomery, the section would operate to the disadvantage of the very persons the gentleman wishes to protect. If, in case of a father's death, a

claim falls into the hands of the heirs, perhaps minors or the widow, will not punish the fraudulent debtor by enforcing the law as in other cases? He could not see the distinction. He could not see any evil which might result from it, except, perhaps in some degree, that of encouraging the credit system. Well. it seemed to him perfectly useless on the part of this Conventtion to make a single effort to destroy that by any act of this body. It may be well for the Legislature, from time to time, to throw restrictions about it, or to take a course in future to discourage the extension of credit.

He would not propose to give any judge in Texas, the authority to imprison the man who is really unable to pay. But he thought there was no principle of justice which demanded the protection of the frudulent debtor who conceals his property from his creditors.

Mr. *Mayfield* replied, that the practical operation of the amendment as offered will be simply this: that no man will be imprisoned except in the cases enumerated. If, however, you adopt the amendment of the gentleman from Montgomery, its effect and operation will be this: A credits B. At the time of extending that credit, it is or ought to be based upon the honesty or integrity of B alone. That should be the principle upon which all credit, if extended at all, should be based; upon the confidence which the seller has in the honesty and integrity of the buyer, that he will apply the proceeds of his labor to the payment of his just debts. But if this provision is inserted, A credits B, not on account of his integrity or character for honesty, not for the good name he may bear in the community in which he lives: but upon the faith that he will be able to reach his proprrty at the maturity of the debt, however dissolute or extravagant he may be, B fails to meet his engagement promptly. He is pressed by A for the payment, and becomes the fraudulent debtor described by gentlemen. Inasmuch as he does not promptly meet the payment of the debt, in the contraction of which the creditor did not trust to his integrity of character, but to the chances of the law to collect it, then a hue and cry is raised against him as a knave. If he secures or transfers his property for the purpose of evading the payment of his just debts; this man who has originally obtained credit upon false principles, incurs the greatest rigor of the law. However poor his wife and children may be, and depending upon him for their daily bread, yet if he merely transfers a cow or a pig, he subjects himself to incarceration: he is exclaimed against as a fraudulent debtor. Strike from your statute book any license of this kind, and you will place credit on a just basis, and there will be no necessity for a man to be deprived of liberty, and his family starved in consequence of inability to pay. It matters not whether the allegation of fraud be true or false, the operation is the same for the time being.

Mr. *Lipscomb* said, (in substance,) that any creditor upon affidavit,

could allege fraud, and the consequence would be the arrest and imprisonment of the debtor, until the matter should be investigated. He trusted the Legislature would always be ready to pass the laws for punishing fraud, but not for punishing misfortune. He had no disposition to put it in the power of the creditor to wreak his vengeance upon an unfortunate debtor, by putting him in prison until an investigation should be had. He had no wish to be legislating here for the benefit of the creditor alone; believing, as he did, that nine times out of ten, the creditor was more in fault than the debtor himself. He agreed with the gentleman from Fayette, that credit should not be based upon any ostensible property, but upon capacity for himself and integrity of character. In an investigation had some time since before the House of Commons in England, commercial men of the first standing invariably stated that credit may be given not upon property, but upon capacity and integrity; as a man's visible property is so easily removed, that no commercial man would give credit upon that basis.

The substitute was adopted.

Mr. Scott moved to amend the substitute, by inserting, after "guardian," "and all other trustees" Lost.

The question then recurred, on the adoption of the substitute as the 14th article of the Bill of Rights, which was carried in the negative, by the ayes and noes, viz:

Ayes—Messrs. Anderson, Baylor, Caldwell, Cunningham, Cuney, Davis, Forbes, Hogg, Horton, Howard, Hunter, Jewett, Jones, Kinney, Latimer of L, Latimer of R. R., Mayfield, McGowan, Navarro, Runnels, Standifer, Tarrant, White, Wright and Young—25

Noes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Bache, Brashear, Burroughs, Clark, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Holland, Irion, Love, Lumpkin, Lusk, Lipscomb, M'Neill, Miller, Moore, Parker, Power, Rains, Scott, Smyth, Van Zandt and Wood—30

Mr. Hemphill offered the following amendment to the 8th section, viz: strike out all to the word "the," in 2d line, and insert, in lieu, "all criminal prosecutions." Add, at the end of the article, the following: "no person shall be holden to answer for any criminal charge, but on indictment or information—except in cases arising in the land or naval forces—or offences against the laws regulating the militia;" which was adopted.

On motion of Mr. Jewett, the Bill of Rights was ordered to lay on the table; and the secretary instructed to have a correct copy of the same, with the amendments, made out.

After several motions to adjourn for a longer time, the Convention adjourned until to-morrow morning, half past 8 o'clock.