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their services were rendered without compensation. He would ask any gentleman here if we have not had superior talent upon the bench since the reduction of the salaries of District Judges? He believed, indeed, that if no salaries were granted, we should secure more intelligence, if not more disinterestedness.

The 5th section was adopted, with amendments.

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

On motion of Mr. Moore, the Bill of Rights was recommitted to the committee on General Provisions for revision. Whereupon,

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

Friday morning, July 18, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The credentials of Ballard C. Bagby, a delegate from the county of Red River, were presented: and on motion of Mr. Young, Mr. Bagby was invited to take his seat as a member of this body.

On motion of Mr. Gage, Mr. Bagby was added to the committee on the State of the Nation.

Mr. Evans presented the petition of Charles S. Hensley, praying for the establishment of a new county, adjacent to the Forks of the Trinity; which was referred to the committee on the Legislative Department.

Mr. Lipscomb offered the following resolution;

Resolved, That the committee on General Provisions be instructed to enquire into the expediency of authorizing the Legislature to protect, by law, from forced sale, a certain portion of the property of all heads of families.

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

Mr. Hemphill offered the following resolution:

Resolved, That the committee on General Provisions be instructed to inquire into the expediency of declaring, in the Constitution, that all certificates for headrights, and all claims, grants, and evidences of title to lands, which were issued to fictitious persons, or were forged, are, and the same were, null and void from the beginning.

On motion of Mr. Young, the rule requiring the resolution to lay on the table one day for consideration, was suspended.

"Judiciary Committee" was inserted, in the place of "Committee on

General Provisions;" and the resolution, on motion of Mr. Young, was adopted.

On motion of Mr. Davis, the Convention proceeded to the

ORDERS OF THE DAY.

The report of the committee on the Executive Department being first in order, was taken up.

Mr. Forbes moved to lay the report on the table.

Lost.

On motion of Mr. Van Zandt, the Convention went into committee of the whole on the said report. Mr. Van Zandt in the chair.

In section 8th, Mr. *Cazneau* moved to strike out "or at a different place, if that shall have become since the last adjournment dangerous from an enemy, or from contagious disorders."

Mr. *Mayfield* said he was inclined to be in favor of the amendment. He believed it the duty of the Governor, when danger threatened, to stand fast by his position, and protect the capital of the country. So far as contagious disorders are concerned, it might give latitude and license, in case of any kind of alarm, to flee from the post of duty and danger. He had himself witnessed, in the short period he had lived in the country, the unparalleled example, when the country was threatened by an invading foe, of the first military order given being for the abandonment of the seat of government. If this provision should be incorporated in the Constitution, an act of cowardice might be shuffled off, by attributing it to contagion, infection and pestilence.

Mr. *Davis* said, that the only authority given the Governor by this section, was that, when it might be necessary, on extraordinary occasions, to convene the Legislature, and the seat of government might be in the hands of the enemy, or dangerous from contagious diseases, of convening it at some other point. He has here no authority to take the heads of departments, and remove from the seat of government, to another point. An authority of that kind is given by a provision in the Constitution of the Republic of Texas.

The word "contagious" is not to be understood in its technical sense, but as applying to that numerous class of diseases called epidemics: such, for example, as that which swept hundreds from Galveston during the past year. Would it be desirable to convene the Legislature at a point where such a disease was prevailing? He did not see the danger which gentlemen seem to think lurks in this provision. If it were the same as that of the Constitution of the Republic, these objections might possibly apply to it. A similar provision is found in the Constitution of Louisiana, where the word "epidemics" is used. Who would pretend to give the name of cowards to the members of the Lou-

isiana Convention? The Constitutions of various other States contain a similar provision.

Mr. President *Rusk* said he should vote for the motion of the gentleman from Travis, in order to insert this: "or at a different place, if that should be in the possession of a public enemy."

Mr. *Moore* would ask if the enemy were within eight or ten miles of the seat of government, if it would be proper to convene the Legislature there? And he would ask the honorable gentleman if he had not known more soldiers lost by epidemics than by the enemy? He hoped the section would remain as it is, adopting the suggestion of the gentleman from Liberty, to insert the word "epidemics," as in the Louisiana Constitution, instead of "contagious disorders." A similar provision is contained in the Constitution of Alabama, and has been tried for years.

Mr. President *Rusk* would prefer his proposition if the enemy were within ten miles of the seat of government. Let the people turn out *en masse*, and drive them away. He thought it unnecessary to insert anything in relation to diseases. He apprehended that the seat of government would be located in a healthy portion of the country. And the same necessity no longer exists for extraordinary sessions of the Legislature. We have the United States now between us and the enemy, and he did not think there was much danger of their taking the seat of government, if there had been heretofore.

Mr. *Brown* said he hoped the motion to strike out would prevail, and the substitute of the gentleman from Nacogoches be adopted. He thought it dangerous to insert a power admitting of such a latitude in construction. There might be an executive in power, who would convene the Legislature in violation of the spirit and intention of the Constitution, and might obtain a literal sanction for the act. Danger is differently estimated by different individuals. He would not entrust an authority of that sort to the Executive, which would place it within his power to contravene the spirit of the Constitution by a mere compliance with the letter. In respect to contagious diseases, there are diseases which lead as surely and immediately to death, which are not contagious; and which ought as much to be provided against. But he would have no provision of that sort. He considered it necessary that the seat of government, where the archives, upon which the property and the liberties of the citizens depend, are deposited, should be preserved; and so far from inculcating in the Constitution the propriety of fleeing from the place, the moment it should be assailed, he would make it imperative on the Executive not to remove, unless in imminent peril. Laws have an influence, not only legal but moral; and let the mind of the Executive become accustomed to this idea; and let the opinion be trans-

mitted from Executive to Executive, it will increase in strength and power as it progresses, until upon the merest conception of danger that may arise, the Legislature will be assembled elsewhere than at the seat of government, and the property of the nation abandoned. If any principle should be inculcated here, it should be, that the national property should be guarded and defended in every possible way, and that the Executive should be compelled to stand at his post as long as it could be defended. He hoped the clause would be stricken from the Constitution.

Mr. Jones said he should not detain the Convention with a speech upon this subject. He was rather unfortunately situated, being opposed to that portion of the report as it now stands, and at the same time not exactly pleased with any amendment offered. He rose therefore to give notice that after the several questions have been taken, he will offer one that will at least satisfy himself. He proposed to strike out all from the word "at," to the word "disorders," inclusive. His object was to place the responsibility with the Executive entirely. The people will then be the judges of the necessity, and will sustain him if he is right. If it shall appear that he has called the Legislature together without cause at another place than that designated by law, he will be directly responsible to the people. He proposed to leave out everything providing for any contingency whatever,

The question was put on Mr. Cazneau's amendment; to strike out "or at a different place," &c. Carried.

The amendment offered by Mr. Rusk, to insert "if that should be in the possession of a public enemy," was then adopted.

Mr. Lusk proposed a substitute for the section, providing that no legislative business should be transacted except at the seat of government.

He said he was confident that this body would temporarily locate the seat of government at a place with which the people would be satisfied. He wished to take from the Governor the privilege of moving it about from time to time. He was clearly of opinion that it would be located temporarily at a point where there is at this time no danger to be anticipated from the public enemy: and as to disorders, he knew not where you could go to get clear of them. His people sent him here with instructions to locate it somewhere or other, and he wished to restrict the Governor from taking it about from one place to another. When the Legislature is called together by proclamation, let the Governor declare the purpose for which it is called to sit, and let the work of legislation be left to the regular sessions.

Mr. Lipscomb said the substitute proposed by his friend from Brazos

had operated well in Tennessee. He would prefer an entire failure to convening the Legislature at any other place than the seat of government.

As to epidemics, he would prefer leaving it to the Legislature to make the necessary provision, if any is necessary. It is not presumable that epidemics would be so prevalent as to prevent the meeting of the Legislature, and it might then adjourn.

With regard to the amendment offered by the gentleman from Nacogdoches, (Mr. Rusk,) he thought the word "possession," when used as a military term, too vague and indefinite. It might be either actual or potential possession. It might be believed by the Governor, if the enemy were in possession of Bexar, that Austin was potentially in his power. He would prefer some expression about which there could be no dispute.

Mr. Lusk said: Upon all subjects, we come to our conclusions from the lights of past experience. How has it been with us upon this? Our Congress, when convened by the President, has, on more than one occasion, entirely neglected the business for which they had been called together, and taken to legislating upon all matters. At one time they repudiated the debt of the country, although they have generally received their own pay. Let us look to the history of the past, Mr. President, for what may happen hereafter. If we are annexed and become the State of Texas; and there can be no doubt of it now, the Legislature will not be required to convene often. We are poor: and if the Legislature is convened together and sits one, two, three or four months, it will be hard to pay the expense; and it will not now as heretofore, be derived from a light duty on a fine watch, but will come directly out of the poor man who earns his living by the sweat of his brow.

The substitute offered by Mr. Lusk was rejected.

Mr. Lipscomb proposed to insert "actual" before "possession."—
Adopted.

The section as amended was then adopted.

In section 9th, Mr. Caldwell moved to insert "in writing," after "information." Adopted.

In section 11th, Mr. President Rusk moved to strike out "penal."—
Stricken out.

Mr. Wood proposed that it should be made the duty of the Legislature at its first session, to prescribe the rules and regulations referred to in the 11th section. It seemed to him that without that amendment, the Governor would have no right to exercise the power intended to be given him by this section. Adopted.

Mr. President Rusk proposed a substitute for the whole section, which was adopted.

Mr. Young proposed an additional section providing for a Lieutenant Governor.

Mr. Davis moved to strike out that part which makes him President of the Senate. He believed the Senate could find one of their own body, perfectly competent to preside over them, and he should object to the Lieutenant Governor discharging that duty. He was in favor of administering the State of Texas on as economical a plan as possible. He could not see the necessity of electing an individual to preside over the Senate. If gentlemen desire such an officer, let him only discharge the duties of Governor, in case of a vacancy, and give him no pay, unless in the discharge of these duties.

Mr. Young said his object in introducing the provision was simply this: if the President of the Senate perform these duties in case of the death of the Governor, a single county in the State will have the privilege of electing the Governor; but where a Lieutenant Governor is chosen with the Governor, the election is general throughout the State. The additional pay which he is entitled to as President of the Senate, is a minor consideration.

Mr. Davis's amendment was lost.

Mr. Runnels offered a substitute for the additional section, which was accepted by Mr. Young, and adopted by the committee.

The committee rose, reported progress, and asked leave to sit again. Report adopted. Whereupon the Convention adjourned until half past 3 o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Gage, the Convention went into committee of the whole, upon the report of the Executive Committee—Mr. Smyth in the chair.

In the 14th section, Mr. Runnels offered an amendment, providing that "there shall be a Secretary of State, who shall be appointed by the Governor, by the advice and consent of the Senate.

Mr. Lewis said: I cannot, Mr. Chairman, forbear making some remarks in opposition to the proposition of the gentleman from Brazoria. I think, sir, that to invest the Governor of this State with a patronage of that sort, would be to give him altogether too much power. The duties of Secretary of State, I think it will be allowed, are of such a character, that he should be entirely independent of that officer. What are they, sir? To "keep a fair register of all official acts and proceedings of the Governor, and when required, to lay the same, and all papers, minutes and vouchers relative thereto before the Legislature; and to perform

such other duties as may be required of him by law." Here then are his duties, specifically assigned. They are such, that in the strict discharge of his duty, he may in many instances be brought into collision with the Governor. Hence the importance of these offices being entirely distinct and separate, not only with regard to the discharge of their respective duties, but the officer here alluded to should derive his authority from a different quarter. I believe in none of the States where I have resided, is the Secretary of State appointed by the Governor. The tendency, I think, is to create a cabinet for the Governor, over whom he may exercise absolute control. To this I am opposed: and I will remark here, that I perceive a very general impression that the people are not qualified to make the selection of officers of this sort. I have more confidence in the character and intelligence of the people, and therefore I am disposed to refer the election of an office so important, and whose duties are so necessary to the good order of society, to the people.— Whatever may be done by this Convention upon the subject, yet as I act upon principle, I shall advocate such a mode of appointment whenever the question shall come up before this honorable body. I will remark, however, that I am under no obligation to any portion of my constituency to refer to the people the election of any officer of the government, I am totally untrammelled in that particular. But I think that mode of election most in accordance with the genius of our institutions, recognizing as we do in our Bill of Rights, the fundamental principle, that the people is the source of all power. Yet we are told that the people are not sufficiently acquainted with these matters; that they are not sufficiently intelligent: that they will be governed by their personal predilections, without regard to qualification. My experience teaches me differently. There are perhaps some offices which they would sometimes confer upon personal friends. But whenever the duties of an office are of any great importance, they discard all considerations of this kind, and act with a higher object in view. And sir, I cannot more perfectly illustrate the position I take, than by pointing you to the members of this Convention. Without solicitation they have been elected from the great mass of the people. The importance of the occasion was considered by the people. They had in view the construction of a Constitution to last perhaps for ages: and they knew that this was not the work of bunglers. They then cast about them for the best talents they could find. And could a better specimen have been afforded of the best talents and experience to be found in Texas? Myself, I say, excepted: for I would not pretend to class myself with some of the distinguished gentlemen here. Why then impute to the people such a want of intelligence and disinterestedness? If, when occasion demands, experience has shown that they select the best qualified individuals from the whole country, to aid in carrying out the measures they so ardently desire, why are they not capable of choosing a Secretary of State? His duties are known to them: they are acquainted with the qualifications

which are necessary; and he who should seek the office, would have a reputation co-extensive with the limits of the State.

Mr. *Lipscomb* said that he did not intend to occupy the time of the Convention upon this subject: but was disposed to make known the reasons why he should vote for striking out. He professed to entertain as great a respect for the people, the source of all power, as any body else, as great as the gentleman from Montgomery himself. The only difference was, that he (Mr. Lewis) thought that to be passing a slight upon the people, while he (Mr. Lipscomb) thought to be treating them with due respect. He believed they would be perfectly satisfied to be relieved from this appointment. From the nature of the office, he who fills it ought to be in harmony with the Executive. He is in daily intercourse with him: his political duties bring him into an immediate connexion with the Executive. And by having this appointment with the Executive, they will increase the responsibility of the Governor; and at last it is the act of the people through the Governor. The people elect a Governor, knowing that he is to appoint the Secretary of State. He did not approve the intimation thrown out, that any disregard had been shown the people, or any disposition evinced here to keep any thing from them. He had not seen any such manifestation here: he who should attempt it would be accounted a madman. It is admitted that the people is the source of all power: but it would be impossible for the people to exercise many and important powers. This is certainly a power which it would be inconvenient to the people to exercise; one which they would be perfectly well satisfied to have placed some where else.

Mr. *Davis* said: I shall oppose striking out for the purpose of amending as proposed. I am opposed to the Governor's appointing any officer whatever. In case I prefer the election by the people to that by the Governor: for I am not willing to give the Executive that power, or any power that can be well exercised by the people. And my vote shall be recorded upon the journals against it. For I do contend that the people are qualified to select their own officers. Our government is as near a democracy as it was possible to make it. But it is impossible for the whole people to meet together and legislate; it is therefore necessary that they should select agents, to whom they must transfer a portion of their original powers: but when they can exercise them directly, I am in favor of their so doing. It was a prevalent notion before the formation of the government of the United States, that the people are incapable of self government; that they should be ruled by something like an aristocracy. But, sir, have the fears then entertained been realized? No, sir. What has been the result of the experiment? It has made the United States equal to any country on earth: its improvement has been more rapid than that of any other: it has satisfied the lovers of freedom throughout the world, that the people are capable of governing themselves, and capable of selecting their own officers. I know

that some entertain the opinion that they are not qualified to select this and that officer. They are qualified however to select the Chief Magistrate of the United States, the Governor of the State, and the Legislature. But they say it is inconvenient for them to elect the Secretary of State. Is there a man here who will rise in his place and say that the people are not qualified to elect the Secretary of State; that they have not sufficient intelligence and wisdom to elect a man to discharge the duties of that office? And if this privilege is taken from them, it will not be upon the principle that they are incapable of exercising it themselves. It is a settled maxim that power is always stealing from the many to the few. I say let power remain with the many so long as they are capable of exercising it. If we begin by saying they are not qualified to choose this officer or that, we shall go on till at length we shall say they are not qualified to elect their Representatives or their Governor, and ultimately that they are not qualified to do any thing whatever. I know that in many governments the people are incapable of self government: for example, in the government upon our western border. But what is the reason? The want of intelligence, of education, and of virtue. It is not the case with the Anglo-Saxon race, that is, the American branch of the Anglo-Saxon race. The people of that race have shown their capacity for self government: and so long as we are desirous to maintain the institutions of our country pure and uncontaminated, let us leave in the hands of the people all the power that by possibility they are capable of exercising.

Mr. Love said: It is an admitted fact, I believe, Mr. Chairman, that we are all lovers of the people. It is also the fact, however, and I for one, speak it without disguise, that we love them better when they do as we wish, than when they do as they please. Admit the principle of respect for the people, yet I am inclined to think it has nothing to do with the selection of officers for particular situations. I must confess it has struck me with a good deal of surprise to notice the course of some gentlemen who were disposed to invest the Governor with military power, a power if any, dangerous to the people of the country. That, according to this Democratic doctrine, was all right. But when we seek to give him the appointment of a man, who is to be or should be connected with him, not only officially, but in the most confidential relations, then the power is dangerous to liberty. Although this very honest people may elect a man Governor, yet they have not confidence enough in him to allow him to select a man who is to be daily and hourly in association with him, whom he is to consult and advise with as a friend. This very kind and loving people will trust him as Governor, they will give him their votes for that office; but it seems they are afraid to trust the Governor with a privilege necessary for the disposal of the business of the country. I trust that some time or other, we shall select a Governor from a class for which I have the greatest possible respect, as plain,

honest, sensible and good men, though perhaps he may spell Congress with a K; who shall have neither friends to advance, nor enemies to put down; who loves his country and will seek his country's good, having no political views beyond his station, and being more capable than others of filling it well. If that period should ever arrive in Texas, it will be indispensably necessary that our Governor should have a friend at hand who can at least write his message, like the Executive of every country, even the U. States of America. It is a fact as notorious as any thing can be, that it is very seldom indeed our President has written his own message: though he may have given the rough draft, or contributed his ideas and views. Every President or Governor is not a scholar. Now if we want the affairs of government to be conducted well, the Governor should at least have some friend about him, in whom he can confide, with whom he can advise upon affairs of importance. If you do not give his appointment to the Executive, you will create an opposition power; the Secretary will become inimical to the Governor; he will be disposed to break him down in order to take his place; and the Governor will look upon the Secretary as a spy upon his conduct: and great confusion must necessarily ensue; and great injury be done to the best interests of the country. Now, the gentleman who last occupied the floor, says that no man dare get up here and argue that the people are not qualified to elect a Secretary of State. I will say that however qualified to select some officers, yet nine times out ten they are very bad judges of who ought to be Secretary of State. There may be a few men who have a great reputation. Liberty or Montgomery might perhaps have some one known to the people as having the capacity to fill any office; but at the same time, in the obscurity of private life there might be found a man, never heard of by the people, who shall be as well qualified as either. Modest merit very often remains in the shade; and there you will often find the man of the greatest talent, and one who will do more service than one who courts popular favor and canvasses the whole State.

It is a poor privilege for the Governor to claim, that of choosing his Secretary of State; if he selected a man of no standing, the nomination will not pass the Senate; and as to the danger, I do not believe that in all time to come our government will be overturned by the appointment of Secretary of State by a Governor just installed by the voice of the free and independent voters of the State of Texas.

Mr. Davis said: he did not know that it was so absolutely necessary to have a confidential friend of the Governor in that office. Such was not the opinion of some of the States which have framed Constitutions. If appointed by the Governor, nine times out of ten he would be a mere tool. It would be useless to call on him for information in relation to the conduct of the Governor; he would feel under a debt of gratitude, which he would repay by getting around any thing improper in his

conduct as easily as possible. As to writing a message, any man elected Governor can find a friend to do that if necessary; it is not indispensable that it should be written by a Secretary of State.

He thought it a dangerous precedent to set, to say that the people are incapable of doing any thing. For our government is founded upon the principle that the people are capable of self-government.

He was satisfied that an effort would be made to give the Governor the appointment, not only of Secretary of State, but of many other officers. The war has commenced upon the Secretary of State; that is the first point of attack. He had understood it was the disposition of this party to fill almost all the offices in the country by the Governor; consequently he met it from the beginning and should oppose it throughout.

Gentlemen say it is inconvenient to the people to make the appointment. Is it not equally inconvenient to the Governor? He is to be elected on the days of the general elections, and it would be very little additional trouble to the people.

Mr. Navarro said that he had listened to the arguments of gentlemen upon this question. As a member of the Executive Convention he alone had sustained the principle adopted in the amendment that the Secretary of State should be appointed by the Governor and confirmed by the Senate. The other members of the committee were all against his views, and he did not think proper to make any remarks upon the subject at that time, reserving them for a more fitting opportunity. It was his firm belief that the best mode and manner of appointing the Secretary of State was that to which he had alluded. The remark had been made to him by the chairman of the committee that the people of the U. States and of Texas as a portion of the United States differed materially from that with which he had heretofore associated; in plain words, that the Mexicans are not always right in the selection of their functionaries, whilst these people of the Anglo American race are capable of selecting individuals in whose capacity and integrity full confidence can be placed. The want of intelligence of the Mexican people had been thrown into his face. He was very much grieved at these remarks, and in consequence was not willing to participate therein in the discussion, and had declined making any proposition upon the subject. He would now subscribe cheerfully to the amendment offered by the gentleman from Brazoria. And he would say that he should not vote for it in consideration of the high intelligence of the people of Texas or their superiority in making selection of their officers; but in consequence of the fact, that the people of the United States, the very people pointed out as excelling in sense and intelligence, conform to the antiquated system of the stupid people of Mexico, in authorizing the President of the U. States to appoint his ministers or the members of his cabinet. Upon that principle, and that alone, he should vote for it. Further, the doc-

trine that the Governor should appoint his cabinet is founded in strict justice and the principles of public convenience. The virtuous, intelligent and enlightened people will certainly elect a suitable man to the highest post in the government. They are capable no doubt, of judging of the qualifications of a Governor; but it may be a question whether they can judge of those of a Secretary of State. If there is sufficient confidence in a man on the part of the people of Texas to elect a man Governor who may merit the office, why should they not have such a high and implicit confidence in the intellect, talent and judgment of that individual, as to presume that he will not appoint a man, unless he merits his full confidence; unless he is an individual, who, in case of need, can stand side by side with him, and propose and advocate the measures necessary to carry out his views of policy.

No doubt the people at large, with the talent, integrity and capacity which they possess, are fully competent to select the members of the Legislative branch of this government. But for a Secretary of State it is necessary that the people should have a sufficient personal knowledge of the person to fill the office of Secretary, and is it possible that they could have this acquaintance? Although they might have a general knowledge of the qualifications and integrity of individuals, at the same time it might be a question whether they have that intimate knowledge necessary to fix upon the man best fitted for the office now under consideration.

Mr. Rusk thought the question of the election of Secretary of State by the people so novel, and one that had received so little sanction from former experience, that the subject was in no great danger from any vote of this Convention. But inasmuch as it had been stated that the war had commenced, he would say a few words now. He was not influenced in the vote he should give by the argument, that the people are incapable of exercising a power of this kind. He had no such reason, acknowledging as he did that the people of Texas knew as much about these matters, and were quite as intelligent as any; though like other people they might be improved. He was not influenced by fear of the people. But there was one argument treated upon by the gentleman from Bexar, (Mr. Navarro) so forcible that he would here repeat it: The Secretaryship of State is a minor and unimportant office; and not of sufficient consequence to draw forth the talents of the various portions of the State. Some individuals about the seat of government will be the candidates before the people, who will be called upon to decide upon the claims of individuals whom they do not know. And how will they decide? They must be guided in their election by the opinions of a few influential individuals. And would you have the candidates for Secretary riding all over the country, making stump speeches, and calling the people from their labors to listen to the explanations of each with regard to his particular and superior qualifications

for the office? The people are called upon to do, what? To determine upon their respective qualifications, and to select men fitted for the faithful discharge of the duties of Secretary. Will they know the man? Not one hundred individuals in Liberty, Nacogdoches or Jefferson counties, for example, would know the individuals who are candidates here. How will they ascertain their qualifications? Why, they must inquire of some one, the gentleman from Liberty, for example. Then they are not acting from their own knowledge of the man; they are confiding entirely in that of the gentleman from Liberty.

He had an objection to this reference of all officers to the people. He believed the people the fountain of all power, and should ever maintain that position. But at the same time he would not call upon them to act directly in every matter; he would not put them to the trouble of electing every officer from the Governor down to Constable. Why fill the country with candidates, and the newspapers with slang and slander? Would the liberties of the people be overturned by the appointment of Secretary of State by the Governor? Is it anti-republican, when twenty seven of the States of the American Union have refused to give it to the people? Are these States not as intelligent, as free and as republican as we can claim to be? He believed there is but one State where the people are burdened and troubled with the election of the Secretary of State. He should vote for giving it to the Governor, because he thought it the proper mode, and not because he would cast any reflection upon the intelligence or integrity of the people. They do not want it, they do not ask you to send among them a host of candidates for Secretary of State, to ride from the Rio Grande to the Sabine, making stump speeches, and annoying them with a statement of their qualifications.

Mr. Brown said that although he had no doubt of the capacity of the people to elect their officers, yet he for one was unwilling to refer this appointment to them. Which of the other methods it was best to adopt he was not certain, without some further information upon the subject.

Mr. Runnels said: by referring to the 12th section which has been adopted, it will be seen that there is to be a seal of the State, to be kept by the Governor, and used by him officially. Every one knows the nature and character of the office of Secretary of State. He is, in fact, the keeper of the seal, and the individual who has to use it. If he is corrupt and disposed to inflict injury upon the Executive, he might make an improper use of the seal without the knowledge of the Governor. Is it not therefore important that he should have the selection of the Secretary, who may have it in his power so seriously to injure him? I believe there is no office under the sun into which corruption may not creep; and we have to rely upon the integrity and ability of those elected to public offices for the faithful discharge of their duties. The

gentleman from Liberty in his remarks adverted to the government of the United States. Does he find any precedent there to sustain him in the position which he occupied? Sir, by a reference to the government of the United States, it will be found that the Executive has the power by and with the advice and consent of the Senate, to appoint a Secretary of State, a Secretary of War, a Secretary of the Treasury, an Attorney General, and a Post Master General, constituting, I believe, his Cabinet. It will be found that none of the States, except Mississippi, the State from which I myself came to this country, is the Secretary of State appointed otherwise than by the Governor or the Legislature. The Legislature is more capable than the people to elect that officer, because they have better means of ascertaining the qualifications of the individual candidates. It is impossible, as has been justly remarked, for the people, dispersed as they are over so large an extent of country, to make themselves sufficiently acquainted with them. Would it not be an anomaly in the history of free governments, a most extraordinary thing indeed, if an individual who should be a candidate for an office nothing more nor less than a mere clerkship, a subordinate officer under the Executive, should he be compelled to traverse the country from one end to the other, electioneering for an office, the salary connected with which should not exceed a thousand dollars? Why, he would expend more in the canvass; and I should like to know what he would say to the people in regard to his qualifications. There is nothing connected with office about which the people care, except that the Governor shall have an efficient officer, and a just man as his Secretary.

Mr. Van Zandt said he would detain the Convention but a moment in giving his views, as he conceived that too much importance had already been attached to the subject. The duties of the office are certainly simple and plain: and principally of a clerical character; and by no means of that high degree of importance which gentlemen seem disposed to attach to them. Nor could he see any great danger in the proposition which had excited their fears for the liberties of the people. We have on this subject, the advantage of the experience of a gentleman who has occupied a high station in a State of the American Union, and whose position gave him an opportunity of investigating and seeing the effects of the system so strongly contended for. Let us profit by the warnings of experience. He himself chanced to reside in Mississippi for a short time, during which the election for State officers occurred. He well recollected seeing men, some of whom were holding office at the time, abandoning their posts, and travelling the State seeking a re-election. He wished that officers should attend strictly to their duties, and at all times be found at their post.

He hoped this Convention would not depart materially from established principles, but would adopt the course advocated by the gentle-

man from Mississippi, when the other system has been carried out to its full extent.

One word further. He believed it was proposed not only to elect the Secretary of State by the people, but also the Auditor and Comptroller. Now he would refer to one officer who had discharged the duties of Comptroller for the last seven or eight years, and who from the purity of his character, and his superior fitness for the office, had given universal satisfaction. It were needless to name Mr. James B. Shaw. He would ask if there could be found throughout the whole extent of the Republic, a single individual more capable than that gentleman? Yet what chance, he would ask, would that man have, honest and retiring in his character, and unobtrusive in his manners, were he to enter the lists before the people against some of the log-rolling gentry of the country? Sir, he would be left in the shade, and some full-mouthed demagogue would be installed in his place.

Mr. Scott said, that as to the question in what manner the Secretary of State should be appointed, he should prefer that by the Governor and Senate, and should vote for the amendment of the gentleman from Brazoria; because he thought it compared more with convenience and the fitness of things than the reference to the people at large. He had himself seen in the State of Mississippi much inconvenience arising from that mode of appointment. And it does not ensure officers of better qualifications, if as good; he thought not as good. There were other offices, he felt it due to himself to say, which he thought should be referred directly to the great source of all power; but with regard to the Secretary of State, he thought the Governor should have the appointment with the consent of the Senate. The people need not be troubled with it. He should therefore, on this occasion, vote for striking out, and inserting the amendment of the gentleman from Brazoria.

Mr. Lewis asked for a division of the question. As had been remarked, this was the beginning of the war between the people and the governors of the people. He would ask members to turn for a moment to the proceedings of the Virginia Convention. A similar attempt was made there. Mr. C——, who was infinitely more of an aristocrat than any gentleman upon this floor, denounced it as aristocratic, and subversive of the liberties of the people. The people are not to be barred from the exercise of their will in a choice of this kind, because it is a matter of inconvenience. On the principles advocated by gentlemen, they may be divested of all their rights: first, because they are not sufficiently intelligent; and secondly, because it is inconvenient to exercise their privileges. As a representative of the people of this county he protested against any such doctrine.

Mr. *Evans* wished to offer an amendment. He proposed to substitute the term "clerk" for that of "Secretary of State." His object was this: If the Secretary of State is the mere clerk of the Governor, to attend to his business, he might be appointed by the Governor: if, however, it is his duty, as indicated in this section, to attend to the business of the people in general, he held that he should be elected by the people. As all the arguments went to convince him that the Secretary is the mere clerk of the Governor, let him be called by his true name.

Mr. *Kinney* said: I will, sir, in the first place, apprise every member of this honorable body, that I do not rise to take part in any war not any fight: because I assure you all, that I have had enough of that at home, without coming to the Convention. There was one part of the argument of the gentleman from Bexar, which struck me very forcibly.— That the Secretary of State was an assistant of the Governor; that the Governor was responsible for every act of his Secretary: that the people could not know the duties devolving upon the Secretary of State, or the duties which the Governor might desire him to perform: and consequently, he would be the best judge of the man who could best perform the duties he required in his own way, and would be willing to assume the responsibility, if he had his own machine to carry out his views. The people may as well elect a man as director over one's own family. They may think that he does not do the duties of his family as well as another who might be selected: consequently they must select a man to take his place.

The Governor, selected by the people, has his functions to perform, and has his assistants to help him; and he is held responsible for all that is done. He is the proper man to choose his assistants. As, if I had a family, I should want to select the individual who was to assist me at home. I am therefore in favor of the amendment offered by the gentleman from Brazoria; and I assure you, sir, that this opinion will not cause any difference or get up any fight or war between myself and any gentleman who takes a different view of the subject; because, although I have some little reputation as a fighting man, yet I am perfectly cool upon this subject.

Question on the adoption of the substitute: lost.

Question on the division of the question, &c.: carried.

Question on striking out: carried.

Question on inserting "who shall be appointed by the Governor, by and with the advice and consent of the Senate;" and,

Mr. *Davis* proposed to insert "who shall be elected by both Houses of the Legislature."

Mr. *Mayfield* addressed the Convention as follows: It was my purpose, Mr. Chairman, to have been silent during this discussion, if the

vote had been permitted to be taken on the amendment of the gentleman from Brazoria, with that of the gentleman from Nacogdoches. And in presenting any views which I may entertain upon this subject, I evidently do it at an unfavorable moment, as the question has already in most of its bearings been amply discussed by the various orators who have addressed the chair. Nevertheless, it has occurred to me that there are some reasons independent of those already alluded to, to my own mind conclusive, and if possible based upon higher considerations, why that plan should be adopted over and above all others. When we look at the nature and character of our government, and the institutions of our country, we find it necessary in dividing the various branches of government and defining the powers belonging to and appertaining to each, to constitute three separate heads, the Executive, Legislative and Judiciary Departments. The very declaration, that the powers of government shall be vested in these several departments, indicates clearly that there are powers appertaining to each of them, which should not in the least degree be commingled, but should be forever kept separate and distinct; that there should be no infringement by one department upon another, but that each should be kept, according to the Constitution and laws of our country, and the principles which we avow, within its own proper sphere and limits. We then declare by our Constitution what powers shall appertain to the Executive department: and first, what shall be vested in the Governor, who shall be elected by the qualified voters for Representatives. He must then, as the Executive head of the nation, the chief of that department, as it were the head and sign board of the government, in order that he shall perform the duties pertaining to his office, be invested with certain powers and privileges; some gentlemen might say *prerogatives*; but that is a term which does not belong to the vocabulary of a free people, a word abhorrent to every republican ear. These powers and privileges are not to interfere with those of other co-ordinate branches of the government. Then what become his duties? First, he is to see the laws faithfully executed. He as one individual cannot attend to the due execution of the laws, unless you give him certain aids, adjuncts and assistants. The question then arises, what shall be the classification and duties of those aids and assistants. All concur in the opinion that the Governor shall be assisted by a Secretary of State, Treasurer, Comptroller, &c. Then shall we not take into consideration the best means by which they shall be called into his service, to insure the most faithful execution of the laws? We proceed also to invest the Governor with other powers in no degree infringing upon the rights of co-ordinate branches. Then if we impose upon him a high responsibility as chief magistrate of the country, standing above all the officers of the State, and commander of the army and navy, and at the same time sworn to see the laws faithfully executed, let us, Mr. Chairman, place in his hands the means which will most effectually ensure the due execution of the duties assigned him. Now, I would appeal to

the candid consideration of every member upon this floor, if you adopt the plan proposed by the report of the committee, will you not then say to him, "Here are certain duties that you have to perform, and which if you do not perform well you will violate your oath, and be derelict in the fulfilment of your obligations; but yet we will place a man there to shackle you and impose a check upon your conduct." Where is the consistency in this? I would appeal to every one here, if the Governor would not be able to give a higher guarantee for the performance of his duties to the community which he represents, if allowed to employ such agents and assistants as he may think fit, than if they are forced upon him? In the political affairs and relations of society, a state of things may frequently arise, in which the Governor may entertain one set of opinions in relation to public policy and propriety, and the Secretary of State given him as an adjunct or assistant, may entertain different views. Where then do you secure any harmony or concert of action? It is proposed by the gentleman from Liberty that this individual should be foisted upon the Governor by the Legislature; and yet the first declaration which we make here is that the several departments shall be kept separate and distinct. Do you keep them separate and distinct when you give the Legislature the power to fasten upon the Governor a man in whom he can have no confidence? Is not the distinction at once lost when you thus force him to accept in his service, to assist him in the execution of the duties assigned him, one in whose intelligence, virtue and patriotism he has no sort of confidence? Could the public interest and service be possibly in any degree promoted by such a line of conduct? Sir, in the history of all free governments, and particularly in that of our own country, it is found necessary that an eternal jealousy should exist between the different departments of government. The principle was first avowed by our fathers, and they were assuredly wise men, when perfecting a form of government which has existed from that period to this, and I hope will exist in its pristine vigor until all this continent of America shall feel the benign influence of the government and principles of our ancestors. Yes, sir: if there is anything sacred in the declaration made by our fathers upon that day so big with interest to the human family, it is this article declaring that the various departments of government shall be forever kept separate and distinct; as the great palladium of our civil and religious liberty. I ask if you will disturb it by allowing such a commingling of the several powers so necessary to the existence of free governments. Is there any man upon this floor, who would desire to see this great principle violated and ruined? Then, for my own part, Mr. Chairman, without any remarks whatever as to how far I am a people's man, or how dearly I love them, and I always have believed that I love them much better than they love me, I shall cast my vote in conformity with the principles which I regard as those of civil and religious liberty, principles as sacred as religion itself. Then I would ask, why give this power to the Legisla-

ture? Is it that he whom the people may elect to preside over their destinies shall be trammelled and restricted in his conduct by the Legislature? That if a political change should take place in a few months after his election, the Legislature shall be enabled to place a spy over him to note and report all his actions, instead of an assistant to aid him in administering the government? With regard to the people, I presume if all hearts could be tested, that I am as dear a lover of the people as those who have so particularly insisted upon placing all power in their hands. But it occurs to me that by giving the appointing power to the Governor, in this instance, you will be taking nothing from the people. Because, when you declare in your Constitution that he is vested with that power, he is elected with that provision in view; with an eye to the fact that he is invested with the power to call to his aid and support men of the best character and standing for virtue, patriotism, intelligence and capacity in the country. Deprive him of this right, and what is the result? You have a Governor; but he is manacled before you; powerless to do good, though he may have much opportunity of doing injury. If you wish the proper responsibility to exist on the part of your Governor, let it vest at once between him and the people.

Mr. *Lusk* said he should vote for the amendment. He came here a people's man, and wanted them to have all they should have. But at the same time he believed he would be doing them justice, in giving the appointment of the Secretary of State to the Governor, with the consent of the Senate. He thought the appointment belonged to him as the selection of one of his family. If the right of election is left to the people in this case, perhaps they will select a man of different opinions from the Governor; and thus give occasion to confusion and discord in the affairs of government. The people by their election of a Governor manifest their confidence in his ability and disposition to select a Secretary of State, who will fill his office with credit to himself and honor to the Governor.

Mr. *Parker* said that he felt bound to vote against the substitute offered by the gentleman from Liberty. He thought experience had sufficiently proved that this appointment should be in the Governor, with the confirmation of the Senate. Certainly that is a much safer mode of choice than the election by joint ballot of both Houses of the Legislature. In election by joint ballot of the two Houses, there is not that opportunity given to investigate and discuss a man's ability, character and qualifications, which is afforded where the appointment is made by the Governor and discussed in secret session by the Senate. There a free interchange of ideas takes place, and the merits of the individual proposed are freely and fully canvassed. For this reason he should oppose the substitute offered by the gentleman from Liberty. And he would

frankly acknowledge that he had belonged to the committee, and raised no objection to the report; yet upon mature reflection he could not approve the method there pointed out. Would it, he would ask, if the election were given to the people, be in the power of the Governor to displace him and fill his place? If not, then in order to keep up the concord and unanimity which should exist in the Executive department, it would be the safest course for the Governor to nominate and the Senate to confirm. If he should make an improper selection, it would be in the power of the Senate to reject; and then it is made the duty of the Governor again to nominate, and so until a man shall be chosen who will meet their views, possessing the qualifications, character and capacity necessary in a Secretary of State.

The substitute was rejected, and the amendment adopted.

Question on the adoption of the section as amended.

Mr. *Bache* said that before the question was taken, he would move to strike out that portion defining the period of continuance in office, so as to provide that he shall continue in office "during the Governor's continuance in office, if he shall so long behave himself well." Because if the Governor should go out of office before the end of the four years, and the Secretary of State should still remain in office, the original relationship would cease to exist. The object was that the Secretary of State should be in for the same term with the Governor.

Mr. *Van Zandt* moved to strike out the latter clause. Accepted by Mr. *Bache*.

Mr. *Hemphill* suggested to make it read simply "there shall be a Secretary of State, who shall be appointed by the Governor."

On motion of Mr. *Van Zandt*, the committee rose, &c., and

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

Saturday, July 19th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. *Gage*, Mr. *Bagby* was added to the committee on the Legislative Department.

On motion of Mr. *Gage*, the Convention took up the