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property. On the contrary, there are none more industrious, more sober, more frugal, or more successful in acquiring property and identifying themselves with the soil and the institutions of the country. Point me to a German, who has been in the country five years, though he has nothing but the labor of his own hands, and I will show you a man who has acquired a little land, who has built him a little cottage, and secured his comforts around him. He advocates the rights of property always; is never a prey to demagogues; never embraces revolutionary doctrines; he is a strong lover of order. I do not ask any haste in imparting to him the right of suffrage, but I do say he is entitled, in some degree, to representation. There cannot be shown a single solitary instance where the German population has shown any disposition to interfere, as a population, with the peculiar institutions of the country. Some such feeling may have been detected in one or two petty princes from Europe, without power, or influence or place among the great German population of this country. I know of no population which is more zealous for annexation than this class which it is proposed to exclude from representation. This much I will say as a matter of justice to myself.

Mr. *Mayfield* said that the amendment offered by the gentleman from San Augustine, would compel him if he could have the patience of the Convention, to lay before them his views and opinions on this grave and important question. And as the evening was far advanced, and the patience of the Convention had been much taxed, he would move that the report lie on the table, and that this question be made the special order of the day for to-morrow at 11 o'clock.

Carried; and

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

Friday morning, July 25, 1845.

Half-past 8 o'clock, A. M.

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

Mr. Lewis offered the following resolution:

Resolved, That the committee on the Judiciary department of the Constitution, be instructed to inquire into the propriety of authorizing the Legislature to establish separate chancery courts whenever it shall be deemed expedient to do so.

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

Mr. Howard offered the following resolution :

Resolved, That so much of the report of the Legislative committee as relates to the basis of representation, the period of taking the first census and the apportionment of representation until that time, be referred to a select committee of ——— members, with directions to report upon the same and moved to suspend the rule.

Mr. Moore referred to the remarks of Mr. Howard on yesterday evening, and his quotations from the Federalist, and proceeded as follows: This is a question of great importance, one of the most important which has been submitted to this honorable body. If we wish to secure the institution of slavery against the assaults of northern fanatics, or those of southern serfs or peons, who are equally dangerous, it appears to me that some basis of this kind must be adopted. Yes, sir, there is danger to our institutions, and, as we are told, the fathers of the American Constitution saw the danger fifty years ago, and provided for it in part, as some of my honorable friends around me desire to provide for it now. Sir, I am opposed to all property representation. I mean that of cattle, lands, or money. But if the members of this body shall deem it requisite that some such provision should be inserted in our Constitution, to secure our peculiar institutions, I will be willing to overlook the measure, or to adopt the basis of all the free white inhabitants including three-fifths of the negro population. Texas is peculiarly situated. She has a northern section where her servile institutions cannot be sustained; where manufacturing establishments will be raised, and large numbers of women and children will be congregated, and in some instances there may be one hundred and fifty women and children to one man. I have been in a city where there are no less than three thousand girls, and only a few men comparatively. Such will spring up here, and, let me tell you, such establishments are always hostile to slavery. Westward of the Rio Grande, there are haciendas having no less than three thousand peons, directed and controlled by one man residing in the city of Mexico. I would ask if there is no reason to fear them, when they may be driven up like sheep to the ballot-box. I have been informed that at one of the precincts at San Patricio, some three or four hundred of these people were called up to vote, and furnished with little bits of paper with something written upon them, and told to go and put them in the box. When they had voted, they asked what these bits of paper were put in for; they could not understand it. I will mention another fact which came under my immediate observation. In my own city I recollect an individual was called to go down to the polls and put in a vote. After he had put it in, he mentioned to the young man whom he accompanied, that now he

was going to put in another piece of paper for his friend the tailor. Is this democracy? Heaven deliver us from democracy like this. Democracy to be equal should be sustained by men equal in rights, and as nearly as possible equal in intelligence. But when an inferior race is brought in to act with a superior, the rights of the superior, intelligent and enlightened portion are often controlled by a minority. We are peculiarly situated in this respect. Notice how often the peons of the west have come in and enticed our negroes away: how they meet them on an equality. They do not intermarry with the white population: they form their connections among the slaves. I will cheerfully vote for the resolution, and hope my learned friend from Bexar may be one of the committee.

Mr. Kinney said: I do not know why the people whom I represent in the western country have been attacked as they have been by the gentleman from Harris. I regret that I was not here on yesterday, to have heard his discourse upon the subject of this people. I must say that so far as I am acquainted myself with the people residing in my immediate vicinity, their behavior is such as to warrant the trust and confidence of at least those people who know them. And they maintain, I believe, as good a position in society as the gentleman from Harris does here among us; what his condition may be among his own people, I do not know.

It is not without reason that I have taken so much interest in the few poor people who are permitted to stay in the western country. Most of the population, or at least a large proportion of that of the place where I reside, is Mexican. They have done as much to sustain the interests of the whole country as the American population: they have been always as willing to pay their proportion towards the support of government as the Americans; as ready to go into the field and fight against a people of their own race for the preservation of our independence. In principle and action they have shown their readiness to do their best for the best interests of the country. And I should think that I was doing them very great injustice, if I did not speak for them when attacked. To me it is a matter of little consequence what a man's name or complexion may be, so that he is received into society, and his actions guarantee him the confidence of those with whom he resides. If a certain population have equal rights with us, secured to them by the laws of the country, then I look upon them as citizens, equally with ourselves. As long as no particular charges can be brought against them, if they have done as much to support the country as others, why these attacks upon them and their rights?

Mr. Lewis said: I trust the rule will not be suspended, for the purpose of making the reference proposed. This question has been fully discussed, and I am inclined to think, would be disposed of now in a

short time. Although every member in this House, I presume, has concluded what vote he will give. I hope, sir, that under no circumstances will that description of property alluded to by the gentleman from Harris enter into any basis of representation adopted by this Convention. And I will take occasion here to remark, that I apprehend no danger from the machinations of a non-slave holding party in this country, or the effect of the efforts of the abolitionists. We shall have no abolitionists here. If there is one passion which predominates over all others in the citizens of this country, it is the desire to hold slaves. They regard them as more valuable than money: and when a man acquires a sufficient amount to allow of the purchase of slaves, that is the first investment he thinks of. The early settlers came here under adverse circumstances. Their wives and daughters have been, of necessity, forced to the wash tub; and they themselves have seen better days, and dislike to turn their hands to the plough. It has been a first object with them then, to convert a portion of their lands they have acquired into negro property, so as to relieve their wives and daughters from the labors imposed upon them; and then they appropriate whatever funds they may obtain in any way to procure the possession of others. If I had any alarm upon this subject, I should be as seriously affected as any other gentleman, although I possess but a small property. Yet to me it is as valuable, as that of any other gentleman here is to him. All the property I have in the world, next to a little piece of land, consists of slaves. But, sir, I consider them perfectly safe. There is, I think, no danger of any assaults upon the institution of slavery from abroad, certainly none at home. But the proposition to make that property the basis of representation, presents a doctrine to my mind more abhorrent than any other: I never can nor will consent to it, so help me God! never. And however far some of my friends may honestly go in this matter, I think they are so far deserting the principles of democracy. Democracy seems to be sunk so low here, that there are none so poor as to do it reverence. But, sir, when you cast it from you, you cast away your fundamental principle. And I am not ashamed to advocate the principles of democracy here or elsewhere. I am no demagogue; but I have principles, which I cherish, and which I will endeavor to practise upon, under all circumstances whatever. And if I should support a system of representation based upon the property which I have, with what face could I return to my confiding constituents, and say to them, upon my property your representation is based, while you, who have fought for the country, who have made the sacrifices consequent upon the early settlement of the country, and have acquired a little spot of land, and gathered a little stock around you, have been left out of view altogether, and have been deprived of your representation, because the alarm was sounded that the negroes were in danger, and we must therefore make them the basis of representation, and thus give that description of wealth an invidious ascendancy.

The gentleman from Harris is peculiarly unfortunate in his illustration of the voting of the peons, as he called them, in the west. I know some of them in that portion of the country. But we have a portion of the Mexican population, a small number, in Montgomery county, and I believe as a matter of justice to them, I must say, that they are possessed of intelligence: and I believe their ideas are generally correct in voting; because they all voted for me; and I had no earthly objection; I think in that instance, they voted wisely. But the gentleman from Harris says, these peons of the west are to be mustered into the service in all political contests; that they are to be brought from the west of the Rio Grande, to vote as those whom their friends may dictate, or suggest. Does he remember, sir, while he is insisting upon this, that he is contending for the qualified voters of the country as the basis of representation? Is this not one of the strongest arguments against it?

But I did not get up to make a speech; but to say that I hoped the rule would not be suspended, and the reference not made.

Mr. *Ochiltree* said: When I inform you, Mr. President, that I have really not made up my mind how I shall vote upon this question, when it shall come finally before this body for determination, it may no doubt create surprise that I should think proper to address the House upon this occasion. But there is a subject, sir, which has been mentioned or alluded to by the various gentlemen who have addressed the Convention, in terms indicative of so wide a difference in feeling and opinions from those which I entertain, that I cannot refrain from giving utterance to my views of the future position of the slave holding State of Texas. Gentlemen affect to treat as a light matter, or spurn contemptuously, any thing like a reference to the prevalence of abolitionism within the limits of this State. It may be a monomania with me: it may be a feeling of a visionary character: but I pledge you my honesty, Mr. President, that I have more fears of the introduction of that fanaticism than of any other evil of any nature whatever. The geographical situation of the country, the inducements held out to the particular class alluded to, go to evince that we have every thing to fear: that we should watch with jealous vigilance their approach within our borders, and that we should adopt speedy measures to restrain their deleterious influence upon our institutions. It is well known that there is already a powerful party in the U. States, a trained band fully and effectively organized for the purpose of abolishing slavery by means of political action. I allude to the liberty party. Its wide spread organization extends from New York as a centre through and around the Eastern, Northern and Western States. It is sparing no means to carry out its ends; its doctrines are every where publicly promulgated and zealously propagated. It has been stated, and I believe truly, that in the late Presidential contest, the leaders of that party exerted effectively their mighty power to control the destiny of the rival political parties in the United States. That the direct influ-

ence of abolitionism is small, I am willing to admit: but when you re-
 collect the close approximation of parties in the United States, you will
 perceive that a very small number can exercise a powerful influence,
 United and organized, ready to cast their votes as their heads may di-
 rect, that party cannot but wield a powerful influence. Look at the
 geographical position of Texas. Upon the coast we have a body of
 rich and luxuriant lands, necessarily to be cultivated by slave labor:
 while on the North, North west, and West, we have a country which
 will be chiefly occupied by graziers and small farmers, who will come
 here for the purpose of exchanging the cold climate and sterile soil of
 the North for our genial seasons and luxuriant prairies. They ex-
 change Illinois for Texas. They leave a country where they are com-
 pelled to labor six months in raising a crop, and spend the next six in
 feeding it away, for the purpose of settling here, where with a month's
 labor they can raise an ample supply of provisions for their families, and
 where our broad and fertile prairies afford an inexhaustible range for
 their cattle. Manufacturing interests will also come here: every in-
 ducement is offered to invite them. When they shall get a foothold in
 the country, you cannot estimate their alarming tendency in relation to
 our slave institutions. Whether the different schemes proposed for the
 basis of representation, free population or the qualified voters, will have
 any bearing upon this subject, I am not prepared to say. But this I
 would say: let us not treat it lightly, let us consider it seriously; and
 let us adopt any measure which will afford the best protection. I do as-
 sure you, sir, though neither a prophet, nor the son of a prophet, that
 there will be more to fear from abolition influences not ten years from
 to-day, than there is from the combined powers of Mexico and all her ad-
 herents. And unless we guard the portals with unceasing vigilance,
 the enemy will gain entrance and get foothold. It was for the purpose
 of expressing my opinions upon this subject that I rose, and not upon
 the particular action proposed at this time. There are gentlemen here
 whose sagacity I have never before distrusted, who seem to me to dis-
 play the most absolute blindness to the consequences which threaten
 them. Have we not been told by one of the most learned, astute and sa-
 gacious politicians of the United States, one who has fixed his name in
 letters of living light upon the scroll of his country's history, John C.
 Calhoun, that he has no doubt of the fact that there is a most powerful
 influence at work on the other side of the Atlantic for the purpose of ef-
 fecting the gradual abolition of slavery in the United States. We have
 Mexico on one side of us: the terms of annexation expose us to the risk
 of an abolition State in the North, and we are compelled to have a free
 State in the West in case of a division. Then it becomes us to be wide
 awake: not to sleep upon our post; but forthwith to shake off the list-
 lessness of feeling which has stolen over us in relation to this most im-
 portant subject.

Mr. Jewett said: It appears to me that the course this debate has taken proves satisfactorily the urgent necessity of suspending the rule for the purpose of referring the whole matter to a select committee. I confess that my predilections are in favor of adopting the free population as the basis of representation. But another important question has been incidentally brought into the discussion, which should not be disguised, but ought to be met fairly and promptly. If gentlemen residing in the lower section of the country wish to erect a battery against abolition, if they wish to insert in this Constitution some article which may operate hereafter for the protection of a particular species of property, let them bring forward some specific plan, let them suggest a remedy for the contemplated evil, let it be discussed, and I will go as far as the foremost in its support, if consistent with the principles of republicanism,—democracy I was going to say, but that poor word has been found of late in such bad company, that even her friends appear to suspect her character. I do not wish that two great and distinct questions should be mingled with the basis of representation. It would seem to be the object of gentlemen now to protect the slave population incidentally. That is an entirely distinct question. If they propose that either branch of the Legislature shall be based upon property, I am willing to meet the question. But as the subject is mixed with another question entirely distinct, I conceive that it would be proper to refer the whole matter to a select committee.

Mr. Davis said: I shall vote against the reference. If the members of this House are not willing to let a portion of the black population enter into the basis of representation, they will vote against it. Gentlemen seem to have great fears in relation to that species of property. I myself live and expect to live in a county where a large proportion of the population will be negroes; a county where choice lands will be wholly devoted to the cultivation of sugar, and occupied by large slaveholders. But I see no necessity myself for protecting this portion of the population. I do not believe that the intelligent politicians of the north really desire the abolition of slavery. In my opinion, they use the question merely to make capital, and sound the alarm whenever they wish to bring fanaticism to bear in the attainment of their objects. What interest has the north in abolishing slavery? How could the north be benefited by making a wilderness of the fairest portion of the U. States? For white labor never can raise cotton or sugar; it must be done, as experience has abundantly shown by slave-labor. And the great and mighty market for northern manufacturers would be closed. I know there are fanatics those who are willing to sacrifice the interests of the country and everything else to their abstract opinions; but they are held in check and led by the master spirits of the north; and should they become dangerous, they would probably be checked up. I have no fears upon that question, none upon earth. Gentlemen tell

of a powerful party on the other side of the water. Great Britain, it is true, has abolished slavery in her islands; and what has been the consequence? Ruin is staring them in the face, and she is now making efforts to place there again that description of labor. If you look at the information given by Mr. Wise when minister at one of the southern republics, you will be satisfied of that fact. British capitalists in all probability are employing American vessels to go to Africa and get slaves, to be taken by British cruisers, not to be liberated and sent back to Africa, but to be sent to the West India Islands, where they are indentured. This indenture is a mere farce; they are brought there and made slaves again. One of the great objects of Great Britain in abolishing slavery in the United States, is to subvert that mighty government. Will the north stand by and see a policy of that kind carried out, without raising their voice against it? No, sir; it will then cease to be a party question; it will be a national question. All the powerful efforts of the mighty men of the north will then be brought to bear against it. I entertain no fears upon that subject.

Mr. Young said he hoped it would not be referred. He thought it had been fully and fairly investigated. While up he would remark that some gentlemen seemed determined to fix abolitionism upon the northern portion of Texas. He had never heard an individual in the portion of country which he represented advocate anything like abolition principles; they were perhaps as far from entertaining such notions as the gentleman from Harris himself. He did not know a single individual there who did not use his best exertions to get hold of negro property. It was contended that this country, from its location, must finally be opposed in interest to the southern country. Why? Suppose they do raise hogs, sheep and cattle, and horses! If they can raise more than they want for their own consumption, what do they do? They look to a southern market; and by this means the northern interest is intimately connected with the southern. It is gravely argued that these causes will operate so far that this country must be surrendered to the abolitionists. He contended that this is fighting against a shadow. He would venture to say that three-fourths of the emigration from Illinois, Indiana, and other northern states, settled there with the determination, so soon as they could do so, to purchase slave property. If the people of the south raise sugar, those of the north must expect to purchase it; and they must buy our meat, and buy our corn. It seemed to him that gentlemen were raising a jealousy between the two sections of the country, when their interests are all one and the same. Some had spoken of persons from the northern states who would come to this southern country for the purpose of changing our institutions. This seemed to him a mere shadow, an unsubstantial notion. There is not, he believed, an individual in the whole Red river country, who would suffer a man to live who should come there and advocate abolition.

He was opposed to referring this subject to any committee, to go through the whole debate again.

Mr. *Ochiltree* and Mr. *Lipscomb* explained, that in their remarks they had not referred to that portion of northern Texas which was immediately represented here, but to a section still farther north.

Mr. President *Rusk* addressed the Convention. Mr. Horton in the chair; I have always found it the case, Mr. chairman, that by debating a question we are much less likely to arrive at calm and correct conclusions, than by quiet reflection. A great deal of extraneous matter has been brought into this debate. In the first place, the rights of women and children, in the imagination of some gentlemen, have been swept entirely away. Some other gentlemen have found negroes to be intimately connected with this subject. Now I do not think that women and children and negroes are much concerned in the matter. Some have seen a northern interest growing up against a southern; some believe that we are in imminent danger from some source; others that we are in no sort of danger. I think, sir, there is a medium between the two extremes. It is idle to tell us that to question the security of the tenure by which we hold slave property, is a mere bugbear, is all moonshine. When I see a powerful party formed in the United States with the express and avowed object of exterminating slavery from the country; when I see that party headed by a distinguished man who has been President of the United States; when I see fanaticism become so powerful that ladies leave their homes to come to the southern states, and run the risk of getting into penitentiaries, in order to persuade negroes to run away; when I see the British Government abolishing slavery in their own islands for the purpose of reaching the United States, and destroying it here, making it a grave subject of discussion in parliament, as it is with their powerful society for the abolition of slavery; when I see that government operating here through her minister upon that question; when I see the system of policy pursued by another minister here, in attempting to introduce a large population by way of Franco-Texian bills, which must come here with feelings adverse to this institution; when I see all these things, it is idle to tell me that this species of property is not in danger. I think the convention ought to do something to guard as well the rights of property as those of the person. In a republican government, composed of people born and raised in the United States, where the constitution and declaration of rights have been their political bible, I apprehend under no particular system, would there be any great danger to personal rights. But property is weaker, and should therefore be taken into special consideration. These are the two grand objects of government, person and property; and should both be fully protected. It is useless then, it is a total waste of time which should be reserved for other purposes, to

array property and personal rights in opposition to each other. I have thought this a very difficult subject; it may seem plain to some gentlemen. But the framers of the constitution of the United States did not think it quite plain; the framers of those of the States did not think it a plain question. They thought it one of the most difficult, and upon a little reflection gentlemen will perceive that it is one of great difficulty. It is out of the power of human wisdom to construct any scheme which will work with perfect fairness. In any way you may adopt there will be an inequality. If for example, you take one thousand as the scale of apportionment, in a county having one thousand and forty there will be forty who have no political weight. It is totally impossible to devise any way which would give each portion of the country exactly its due weight.

I trust there will be no belligerent feelings between the north and the south. I think a compromise can be effected which will suit everybody. An observation which fell from my colleague from Nacodoches, called out the gentleman from Red river. Now there is no difference of opinion between them; he did not mean to include that county, but to say, striking the line above Fannin county, that there was a large portion of Texas, comprising a fine country, capable of sustaining a dense population; and it is likely to be taken possession of, if the war with Mexico goes on.

There is another exciting subject, one which I trust will be allayed. It is useless to conceal the fact, that sectional feelings have grown up in the country. The time has arrived, I trust, when that ill favored feud cannot be exercised: and all can meet and say they belong to Texas, and feel as much interest in one section of the country as another; when the east and the west, and the middle and northern sections can all come in here in this Convention for their proper weight in representation. We are bound to fix this matter by compromise, let us do so in the spirit of good feeling. The better plan in my opinion is to refer the whole matter to a committee who may report some plan for our present representation, which will deprive no portion of the country of the rights which we are bound to protect.

Mr. *Mayfield* said: I do not rise for the purpose of indulging in any reflections upon the course of members in relation to this question. I will simply however, remark, while up, that it is forcibly impressed on my mind, that all the legislation as well as action of this convention should be directed exclusively to our peculiar interests and the political relations in which we stand to the rest of the world. We have a high political interest to maintain, with which the habits and pursuits in life of our citizens must necessarily be forever identified; as is clearly manifest when we take into consideration our climate, soil, and the productions of that soil. When we look at Texas in her present situation, it is true that there seems to be in some degree a mingling of conflicting

interests. But the great and permanent interests of the State must first be guarded and protected. Texas is almost exclusively an agricultural country. Her geographical position, her climate, soil and productions clearly indicate that her great wealth is to be derived from the cultivation of the earth. The resources of our country then cannot be developed, without the application of slave labor and slave capital. It is true, that in times to come there will arise another great interest which should also have its guard and shield, and complete protection thrown around it; that of grain growing and stock raising. Then if any compromise can be effected, and we can adopt a system by which all the several interests will receive the guards necessary to their proper maintenance, I am willing to support it as the correct course to be pursued upon this occasion. The report of the committee has elicited much debate and developed a great contrariety of opinions. And I am happy to discern this morning a disposition on all hands to come to some common understanding, and to extend a strong protecting arm to the most important institutions and greatest interests of our country; taking at the same time into view the great danger threatening the institutions of the land in consequence of annexation to another government, and one of confederate States. In connection with this subject I will call your attention to a recent debate in the United States Congress, in which a distinguished statesman of South Carolina; and one of the members from Alabama took part in opposition to the abolition doctrines of John Quincy Adams. Upon which occasion the southern statesmen repelling the assaults made upon the institution of slavery in the south, were replied to by Mr. Adams, who, especially directing his remarks to the gentleman from Alabama, said, that so far as this institution was concerned, none of the slave or southern states had adopted the principle of the federal basis of representation, and particularly that it had been abandoned by Alabama, the state of the last mentioned gentleman, and added that he, of all others should not complain, inasmuch as by the fundamental law of his own state, this principle had been abandoned, and representation based upon free white population. Upon this occasion he gave notice, that so long as he should continue as a statesman to mingle in the political affairs of his country, he would, session after session, and year after year, bring this subject to the consideration of the American people. And in this is there no cause of alarm? Is there no danger? Is there no apprehension to be entertained, when a man so distinguished, one who has occupied so high a political station gives us notice and warning of the onward march of abolitionism? Let us, then, take warning in time; and give to our slave property that guard and protection, which will make Texas, occupying the position which she does, both political and geographical, when the great struggle shall hereafter arise, to become the asylum and sheet anchor of this institution. I speak upon my own part, as well in behalf of the West, as of my country at large, which, I will frankly say,

has a stronger hold upon my affections, and presents a stronger appeal to my patriotism, than any sympathies which I have entertained or may ever entertain for the particular section of country in which I live. Then I would say on this occasion to my Western brethren, and would appeal to my fellow citizens from the East, let us upon this great question, and all questions which have the least tendency to disturb the public mind and sever us in opinion and sentiment, unite and put our shoulders to the wheel, exerting together our best efforts for the protection of the whole. Let our motto be "Texas, and nothing less than Texas." Therefore, without obtruding any further remarks at this time, I shall vote for the reference as proposed; and I hope the committee to be raised will come to some compromise, such as will give satisfaction to the members of this Convention and receive the approbation of the people.

The question was then taken on the motion to suspend the rule, and lost; and the resolution was laid on the table one day for consideration.

On motion of Mr. Davis, the special order of the day was taken up, being the amendment of the committee of the whole, to the 30th section of the report of the committee on the Legislative department.

Mr. Darnell withdrew his amendment to the amendment of the committee.

On motion of Mr. Mayfield, the amendment of the committee to the said 30th section, and all other sections of the report that relates to the basis of representation, and the subject of taking the census, was referred to a special committee; upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brown, Caldwell, Cazneau, Cunningham, Cuney, Forbes, Hemphill, Hogg, Horton, Howard, Hunter, Inon, Jewett, Jones, Kinney, Love, Lipscomb, Mayfield, McGowan, Miller, Moore, Power, Runnels, Ochiltree and White. 31.

Noes—Messrs. Bagby, Brashear, Burroughs, Clark, Darnell, Davis, Evans, Everts, Gage, Hicks, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McNeil, Parker, Raines, Scott, Smyth, Standefer, Tarrant, Van Zandt, Wood, Wright and Young. 26.

Mr. *Baylor* when called upon to vote, said that he should vote for the reference, not with the view of sustaining any ideas suggested during the debate, but in accordance with the old parliamentary rule, to give the friends of any particular measure every opportunity to mature it, and bring it before the House in the best possible shape of which the subject is susceptible. But he should in due time give his opinion upon the proposition. He should protest against property being made the basis of representation, in any shape.

Mr. Jewett moved that the committee consist of three members from eastern Texas, three from middle, and three from the western districts of the country, which was carried, and

On motion of Mr. Rusk, three were added from the northern division of the country.

On motion of Mr. Moore, the President was invited to serve on said committee.

The amendment of the committee of the whole, as a substitute to the 31st section, is as follows:

The first election for Senators and Representatives under this constitution, shall take place on the _____ day of _____ and shall be conducted as near as practicable, according to the law now in force regulating elections, and the Senators and Representatives so elected shall continue in office until the _____ day of _____ 1846, when a general election shall be held for Senators and Representatives throughout the State, according to law, who shall hold their offices for the term prescribed in this Constitution. The Senators thereafter, shall be elected every four and the Representatives every two years, at such times, places, and in such manner as the Legislature may hereafter prescribe by law; which was read and adopted by the Convention.

The additional section, of the committee, to the 33d section, was also adopted, and is as follows:

The members of the Legislature shall, at their first session, receive from the Treasury of the State, as their compensation, three dollars for each day they shall be in attendance on, and three dollars every twenty five miles travelling to and from the place of convening the Legislature.

The following additional section of the committee was adopted as the last section of the report of the committee on the Legislative Department.

In order to settle permanently the seat of government, an election shall be holden throughout the State at the usual places of holding elections, on the first Monday in March 1850, which shall be conducted according to law, at which time the people shall vote for such place as they may see proper, for the seat of government; the returns of said election to be transmitted to the Governor by the first Monday in June; if either place voted for shall have a majority of all the number of votes cast, then the same shall be the permanent seat of government until the year _____, unless the State should sooner be divided. But in case neither place voted for shall have a majority of the whole number of votes given in, then the Governor shall issue his proclamation for an election to be holden in the same manner, on the first Monday in October, 1850, between the two places having the highest number of votes at the first election. The election shall be conducted in the same manner as at the first, and the returns made to the Governor, and the place having the highest number of votes shall be the seat of government for the time herein before provided.

On motion of Mr. Rusk, the report was ordered to lay on the table, and the secretary required to make out a fair copy, embodying amendments.

On motion of Mr. Anderson, the report of the committee on the Judiciary Department was taken up, after various motions to adjourn.

On motion of Mr. Scott, the Convention resolved itself into a committee of the whole—Mr. Horton in the chair.

In the 1st section, Mr. Lewis moved to strike out "inferior," and insert "others."

It has been considered good policy, he said, in several states to establish separate chancery courts and separate criminal courts; and he thought it good policy here to give the Legislature the power to establish them whenever the situation of the country should make it right and proper.

Mr. President Rusk said that he should vote against the amendment for two reasons. In the first place, he did not conceive there was any necessity of a separate chancery court. By the practice now, you can obtain in the district courts everything you could obtain in chancery. It is a less expensive system to suitors, and less difficult in practice. If in any proceeding in law, it becomes necessary to resort to the conscience of a party, our laws point out a plain and easy method. Every thing can be done by the present system in the district courts. Again: it is established that the State government must be erected upon an economical basis. If you give the Legislature the power to create additional officers, they will invariably establish them. Some gentleman will conceive that he is entitled to be chancellor, and will induce the members of that body in time to authorize and establish the office. If not in the first or second, by the third year they will establish any office you may now authorize them to establish.

Mr. Lewis said: This would not make it imperative to establish a court of chancery more than any other court demanded by the wants of the country. It may be deemed necessary to establish criminal courts, perhaps others. He apprehended, and it was to be presumed, that the Legislature would never exercise this power unnecessarily, or to the detriment of the country, consisting of representatives of the people whose wishes and interests, it might be fairly presumed, would be known to them. There can be no harm in giving them the power. He recollects that in the early settlement of Alabama, there existed there at that time, the same sort of jurisdiction in matters of law and chancery which existed here. It was found exceedingly inconvenient and detrimental to the interests of parties concerned; and after a number of years it was found necessary to separate the courts. Now the existence of separate chancery courts have given very general satisfaction. A Judge who is

called upon to decide cases in law and equity in the same hour, cannot do justice to the parties concerned. - A mind constantly engaged in the investigation of matters of law, is not in a situation properly to investigate questions of equity and chancery jurisdiction.

Mr. Davis said: In Alabama, the courts of law and chancery are separate and distinct, though the judges are made the chancellors. But here we get along with some degree of convenience under our present system. He was opposed to striking out, for fear that the Legislature, some time or other, might think it necessary to establish separate chancery courts.

Mr. Baylor said: As chancery courts were established some time before he left Alabama, he thought proper to remark, that so far as their practical operation is concerned, from all he can learn, they have not worked well. The tendency is to multiply the officers of the state, with little benefit to society. They should not be multiplied by and what we absolutely require. If you open a door for intrigue to the Legislature, efforts will always be made to establish chancery courts. He thought the bill as it now stands, as good as we can possibly have it.

Mr. Brown said: We have in our courts a practice with which the country is acquainted, and which attains all the objects of a separate jurisdiction. By the present system, cases arise indiscriminately upon the docket; and if a case ought to be governed by the rules of the common law, it is governed by them; if by the rules of equity, it is governed by that. As to chancery, there seems to be no beneficial object to be gained by the amendment.

Mr. Lipscomb said: So far as the history of chancery courts in Alabama is concerned, he did not know whether the system works well or not. But he knew that at the time when the courts were separated, it was absolutely necessary. The chancery dockets in the State for years had never been disposed of at all. It is the natural course, where juries and witnesses are in attendance to take up the common law side first. The consequence was, that the term would expire, and the chancery docket would remain untouched: that there was a vast accumulation of business. Our judges are called upon now, if they believe a case to belong to law, to take it up and try it as such; if to equity, to set it down as such, and try it as such. Some of our judges believe, that, with the mixed power that they possess, they are called upon to refer every thing to a jury. It is the practice of some judges, in certain cases, to put it to the jury to say whether equity principles prevail, or not. Others, he thought, more sensibly, make up an issue of fact for the jury. If we should have, for a series of years, a series of judges, who would build up this mixed system, he was not prepared to say but it would work well.

But at present, our system does not work well. He did not feel very much interested in this question, because he believed it would all depend upon the judges we should first have.

Mr. Henderson said: If the object is, to effect the speedy trial of causes, it would seem a more easy matter for the Legislature to pass an act requiring the judges to dispose of them as they are recorded upon the docket according to age and number. Then it would be unnecessary to tax the country with the support of an additional number of judges. He could see no good in the amendment. He believed it the general opinion of the people, as well as the majority of attorneys in the country, that something like our present system should continue in operation. — He thought it could be matured, so as to give general satisfaction, and promote justice.

Mr. Ochiltree said that he had witnessed the efficacy of the present system in dispensing justice and establishing truth. He should be loth indeed, to see a separate chancery court established in Texas. He hoped the section would be suffered to remain as it is: and that hereafter the Legislature would look upon it as precluding them from establishing a separate chancery court.

Mr. Hemphill said. The distinction between law and chancery is by no means natural. It is artificial; known only to the jurisprudence of England, and unknown upon the continent. Many of our lawyers lived here several years before they knew any distinction between them. In the civil law, or the Spanish law, all is equity and all is law. The judges, before 1840, were under no necessity of making any distinction: they could apply every principle of justice known to the laws of the land in determining any controversy. There is a section in one of our laws, authorizing the judges to apply either: and a judge is now enabled when cases come before him, to apply either the principles of law or those of equity. He saw no necessity for a separate chancery court. He thought with his colleague from Washington, that it depended a great deal upon the judges. They will understand what is law, and what is equity, and if so, will be able to build up a good system.

Mr. Love said: He was satisfied with the provision as it was. The system now recommended by the committee, is one which is engrafted to some extent upon our institutions; and one that he wished to see continued in operation.

We are too apt to want to do every thing in our own way as we wish, and to preclude every body who may come after us from doing as they choose. Occasions may arise, when the burthen and press of business may render it indispensably necessary to create another tribunal with jurisdiction over a particular class of cases. He did not see any great evil

which had arisen from the union of jurisdictions in states where they are united. At the same time he did not see any evil in giving the Legislature the power to establish such a separate court; he did not think that body would do it. It would be expensive and inconvenient, and unless an emergency should arise to render it necessary, he did not think it would be attempted.

Mr. Young said: By the law of the country at present, the district court has jurisdiction as well in cases of equity as law; and it is the duty of any judge, upon the examination of a case, if there seems sufficient equity in it, to transfer it at once to that side of the docket. It was objected that by this means all suits in equity are postponed. This might be avoided by the legislature of the country, which might fix a sufficient time for court, and divide it into three distinct periods; and the judge, in the first period, should settle all suits at law; in the second, in chancery; and in the third, dispose of the criminal docket.

When those suits are settled in the district courts, the expenses are no greater than those attendant upon suits at law. But if you change them to a chancery court, no lawyer will appear in a case for less than twenty-five dollars; whilst you can get them in a court of law for ten.

It seemed very clear to him that the present system was as wise and good a one as could be adopted.

Mr. Brown suggested, that under the present system, if you found that you had brought your case within the wrong jurisdiction, as sometimes might happen to the best lawyer, your client would not be thrown out of court, but his case would only be turned over to another docket, without expense. He is a very good lawyer, and knows all about his case, who knows which jurisdiction it belongs to. That difficulty is wholly avoided by the system as it stands.

The committee refused to strike out and insert: and thereupon rose, reported progress, and asked leave to sit again: which report was adopted, and the Convention adjourned until half-past three o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment, and went into committee of the whole, on the report of the committee on the judiciary department. Mr. Moore in the chair.

In the 3d section, Mr. Henderson moved to insert after "only" the words "in all criminal as well as all civil cases." He had lived in a state, North Carolina, where a man may appeal in any criminal cause, and it worked no inconvenience.

M. Scott moved to strike out "criminal as well as" from the amendment.

Mr. *Ochiltree* said: He should support the amendment of the gentleman from Montgomery. The path in criminal cases is a well beaten one; error very seldom takes place. Precedents are against the right of appeal in these cases; if it be the case in North Carolina, it is not the case that the right of appeal is granted in any other state he had lived in. Points are certified up as novel, however, in criminal cases. If you give this right, every villain in the land will go unwhipped of justice in all time to come. He thought no protection of this kind was granted in Georgia, Tennessee, or Alabama, with the criminal proceedings in which he was conversant. He thought it was sufficient to allow points to be certified up as novel and difficult.

Mr. *Hemphill* thought the gentleman from Natogdoches was mistaken. He came from a state in which he had lived a great many years, where the laws allowed an appeal in criminal as well as civil cases. No criminal was ever tried in South Carolina but had the right of taking up his cause to the highest court in the land. He was not obliged to depend upon the caprice of his judge with regard to points novel and difficult. This sounds too much like the common law doctrines of two hundred years ago, when criminals were not allowed to appear by attorney, &c. The state of Louisiana, after her courts had decided some years ago, that, according to the common law, there was no appeal in these cases, has been obliged, by an amendment of her constitution, to constitute a tribunal for the trial of criminal cases in appeal. He was in favor of giving the supreme tribunal jurisdiction in these cases; though it might be, he thought, confined to the law.

Mr. *Love* said: He did not see the possibility of convicting a man for any crime, if the amendment should be adopted. Besides, it gives privileges to one class which it might deny to another. He believed those who contemplated the commission of crime, took the chances of acquittal into the calculation as well as any thing else. There are no jails that pay their criminal expenses; jail doors are thrown open because neither the sheriff nor the county has the money to support the prisoners. A man might have to remain one, two, or three years, before he could get his case taken up, a burden to the county. Some few of the states, three or four, perhaps, admit the right of appeal in these cases. It is done, however, with certain restrictions. If you adopt it in the constitution itself, without restrictions, you can place none upon it by law.

He had always thought that the great evil in the administration of criminal law was, that you could not try the crime at the moment of its

commission, and execute the punishment before the sun was down. The longer the delay, the greater the incentive to commit crime.

Mr. President *Rusk* said: It seems the legislature can make a law giving the right of appeal where the amount of one hundred dollars is in controversy, and a party is dissatisfied with the decision of the district judge (and what is a district judge, but a man subject to like passions with ourselves?). But if his reputation is at stake, if a disgusting punishment is about to be inflicted on him at the whipping post, or his life is to be taken, in order that criminals may not go unwhipped of justice, his every thing is to be made to depend upon the fiat of a single district judge. No consideration of expense will ever induce me to support a proposition so repugnant to my feelings.

Mr. Scott withdrew his amendment to the amendment, and Mr. Davis offered a substitute, providing for the appellate jurisdiction in civil cases and in criminal cases, in such as shall be prescribed by the legislature: which was rejected.

Mr. Lipscomb offered an amendment to strike out "only" and insert after "state" the following: "and in all criminal cases it shall be competent for any judge of the supreme court to grant a supersedeas and writs of error, returnable before the supreme court, if, in the opinion of the judge to whom application is made, error has intervened." Adopted.

Mr. Love offered an amendment requiring bond and security for all costs, &c., and providing that bail shall not be allowed after conviction.

Mr. *Rusk* said: The operation of that would be to give the man who was able to do these things a fair opportunity of going before the higher court; and the poor man, who had neither friends nor money, would be excluded from the benefit of one of the provisions of your constitution. The amendment was rejected.

Mr. Van Zandt offered an amendment: after "issue" insert "writs of habeas corpus, and, under such regulations as may be prescribed by law, writs of injunction, &c." Adopted.

Mr. Forbes moved to strike out "not more than three places," and insert "the seat of government." Rejected.

Mr. Scott offered a substitute for the whole section, which was rejected; and the section, as amended, was adopted.

On the motion, of Mr. Van Zandt, the committee rose, &c., and the Convention adjourned until to-morrow morning at half-past eight o'clock.