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Saturday, July 26th, 1845.

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

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain, as follows:

Oh, Thou, before whom we are again permitted to come, for the purpose of making prayer and supplication. While we are thus permitted to address thee this morning, we would make our humble confessions, and acknowledge the manifold obligations we are under to thee for the mercies of the night past and the light of this morning. We would ask thee to pardon our multiplied transgressions; cleanse the thoughts of our hearts by the inspiration of thy Holy Spirit, that we may perfectly love thee and worthily magnify thy great and gracious name. Throw around us the arms of thy mercy, we entreat thee: guide us by thy counsels and support us by thy grace, and remember with us, all we should pray for every where. Smile, we entreat thee, upon all who are travelling by land or by sea. Bless this land and nation. Smile upon this Convention in all its deliberations; grant that all their doings may redound to thy glory and the best interests of the community. Regard with us all who have said, *pray for me*, and all whom duty, grace, or gratitude, require us to pray for. And, finally, when we have done with the sorrows of this life, bring us to thy everlasting kingdom, through Christ, our redeemer. Amen.

The President announced the special committee contemplated by Mr. Mayfield's motion of yesterday, referring the amendment to the 30th section, and all other parts of the report of the committee on the legislative department, relating to the apportionment of Representation.—Messrs. Mayfield, Runnels, Howard, Moore, Love, Lewis, Henderson, Armstrong of J., Ochiltree, Holland, Tarrant, Everts.—12.

Mr. Evans presented the memorial of Charles S. Hensley, agent and attorney for Wm. S. Peters and associates, protesting against any action of this body on the subject of the colonization contract entered into between this government and the said Peters, and for other purposes, which was read by the Secretary.

Mr. Love moved to lay the memorial on the table, which was carried.

On motion of Mr. Evans, Mr. Hensley was authorized to withdraw the memorial.

On motion of Mr. Cazneau, the Convention took up the

ORDERS OF THE DAY.

Being the report of the Committee on the Judiciary Department.

On motion of Mr. Parker, the Convention resolved itself into a committee of the whole, on the said report, Mr. Moore in the chair;

Mr. Lewis moved to strike out the 5th section. Lost.

Mr. Young offered an amendment: "The judges of the supreme and district courts shall be elected by joint vote of both houses of the legislature; provided, the person elected as district judge shall be, at the time of his election, a resident citizen of the district for which he is elected." Rejected.

Mr. Lewis offered an amendment, providing that the judges of the supreme court shall be elected by the qualified voters of the state; and those of the district courts by the qualified voters of the districts, shall be resident citizens of their districts at the time of their election, and shall continue to reside therein so long as they exercise the functions of their office. Rejected; and the section adopted.

In the 6th section, Mr. Rannels moved to amend the latter part of the section, so as to make the appointees hold for the term for which they were appointed, and not for seven years.

Mr. *Lipscomb* said: He hoped the amendment would not prevail. His objection was this: it would occasion too many appointments to be made at the same time. It is very desirable to separate these appointments, and let them fall at different periods, so the judges may not all go out of office at the same time. If the section is left as reported, casualties and resignations will soon produce the desired inequality; but if you let them all go out at the same time, you will have too many new judges all coming in together, without the advantage of the experience of the others. An objection might be made to the patronage of the governor, if called upon to select the whole batch at once. The candidates and their friends would be able to exert a greater influence than if one or two only were appointed at any one time.

Mr. *Hemphill* said: He believed there was but one office in the government, in which there was any necessity of filling a vacancy until the expiration of the term; that was the office of senator. It has been supposed to be proper in the organization of the senate, that a certain portion should vacate office at a particular time, a certain class thrown out and their place supplied. But he could see no reason why, when a judge has departed this life, any one should be appointed to fill the remainder of his term; there is no reason at all in this case for connecting the dead and the living. If there is any object in a term of seven years, it is to increase firmness of character in the judges, by giving them a long term of office.

Mr. *Rannels* said: It would be an easy matter to provide that they should be classed, and go in and out at different periods. But he

would prefer the plan he had proposed. It seemed to him better that the term of office should expire, and vacancies be filled, at regular periods. He did not, however, think it a matter of much consequence.

Mr. *Love* thought it would promote the independence both of the legislature, or appointing power, and the judiciary, to have the appointments fall at different periods. And this would prevent any possible combination, based upon the fact of so many vacancies occurring at the same time.

Mr. President *Rusk* offered a substitute for the 6th section, providing that the judges of the supreme court shall hold their office for a term of five years.

Mr. *Ochiltree* suggested six years, as the sessions of the legislature are to be biennial. Amendment accepted by Mr. *Rusk*.

Mr. *Mayfield* said: This makes no provision for filling vacancies. And really for myself, however much I may regret the difference of opinion, I think that even this period is not long enough. I think the 6th section will require some amendment, and can be so modified as to meet the views of the committee, whatever mode of election may be adopted. The objection that there will be two batches of judges to be appointed by the first Governor, can be obviated by shortening the period of office of the first judges, and lengthening that of those who come afterwards. The committee as I understand, were influenced by some consideration of this sort; that in the early history of our State, in our judicial relations as well as our political affairs, we should provide for nothing permanently. They did not wish to place in the hands of the first Governor the power of imposing upon the people for a long series of years, any particular class of officers. And as it concerned the judges, they considered that whatever learning and talents our bar might be at present possessed of, in the emigration which will flow into the country, as whether justly or not, it has the reputation of affording a fine field of interprise to the legal profession, men of the first legal eminence and highest professional standing, would in a few years come to this country, and by shortening the term of the first set of judges, if such men should think proper to identify themselves and their fortunes with the country, the people would then have the opportunity of selecting from those who may come in within the next few years. We do not thus act unjustly towards the members of the profession at present in Texas. There are men among them who would ornament any bench, or illuminate any bar or profession; men who may become distinguished and render the greatest services to the country when elevated to high judicial stations. At the same time we must take into consideration the vast interests to be adjudicated, and the situation of

our professional gentlemen, for I will make the assertion that there is scarce one among them possessed of a fair reputation, of industry and laborious habits, who is not more or less interested in these great and perplexing questions already agitated, and which may soon become of more serious importance than heretofore. Then if you at once declare that the judges first elected or appointed shall hold their offices for the term of six years, you will necessarily impose it upon the appointing power wherever you may vest it, to select your judges from men more or less interested in exciting questions, many of which ought to be determined before the expiration of six years.

For myself, I will say at once, that I would be in favor of having the Judges of the Supreme Court hold their offices for twelve years, and the District Judges for eight. I believe that the very term itself has a great influence upon the independence and firmness of character of the Judges.

Mr. *Rusk* said he should withdraw his substitute with the view of permitting these sections to remain as they now are; as it is not yet positively determined for what length of time the Governor shall serve, and it is desired not to give the first Governor the appointment of two batches of judges.

He was in favor of a long term of office for the judges. He looked upon the judiciary as the bulwark of our liberties; as the most important branch of the government, and one which should attract the notice and reflection of members more than any other.

Mr. Lewis moved to strike out "seven" and insert "six." Lost.

Mr. *Henderson* said, if the object was to avoid giving the Governor the appointment of two batches of judges, he would offer an amendment.

He accordingly offered an amendment providing for that object.

Mr. *Forbes* thought that what is urged here as an objection, is a benefit. The objection is, that the appointing power might be made use of to serve party purposes. Now if you give this power to the first Governor, if the judges here proved to be good, he will probably renominate them. Whereas if you give it to another Governor, who will come into office with different political views, he will probably nominate those of his own party or peculiar opinions. He thought it the interest of the country to enable the first Governor to appoint the second set of judges. If not properly qualified, two-thirds of the Senate would be sure not to confirm the nominations.

The amendment was rejected; and the 6th section adopted.

In the 8th section, Mr. President Rusk moved to amend that part in brackets so as to read "not less than seven counties." Rejected.

Mr. Rusk moved to amend, so as to read "not less than six nor more than twelve." At the suggestion of Mr. Baylor, he added "except in case the District shall contain a city with a population of 5000."

Mr. Evans offered an amendment providing that districts should be so arranged as to oblige each judge so far as possible to be engaged in the discharge of his official duties for ten months in the year. Rejected.

Mr. Darnell moved to strike out "5000" and insert "10,000." Rejected.

Mr. Cunningham moved to insert "or town." Rejected.

The amendment offered by Mr. Rusk was rejected.

Mr. Young moved to strike out "reside in the same," and insert "shall at the time of his appointment be a resident citizen of the district, and continue such during his continuance in office." Rejected.

In the 9th section, Mr. Cunningham moved to fill the first blank with "two thousand;" Lost, and both blanks were filled with "fifteen hundred."

Mr. Rusk moved to insert "increased, or." Adopted.

On motion of Mr. Howard, the Committee rose, reported progress, and asked leave to sit again. Report adopted, and on motion of Mr. Gage, the Convention adjourned until half past 8 o'clock, Monday morning.

Monday, July 28th, 1845.

Half past 8 o'clock, A. M.

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

The committee on the "Bill of Rights and General Provisions of the Constitution," to whom the report was re-referred, made the following report:

Committee Room, July 26th, 1845.

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

The committee, to whom was referred the Bill of Rights, have examined the same, with such amendments as have been incorporated by the committee of the whole, have had the same under consideration, and instructed me to report the same back to the Convention, and recommend the adoption of the following verbal amendments, viz: strike out