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

the word "that," where it occurs 1st line, 1st section; in line 2d, 2d section; in lines 5th and 6th, in section 4th.

[Signed] ISAAC VAN ZANDT,

Chairman of the Committee on B. of R. and G. P.

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

Mr. Burroughs offered the following rule:

Resolved, That the President of the Convention shall first enquire if the Convention is ready for the question—if ready, he shall fairly put the question; after which there shall be no debate on that question: this rule shall apply to the committee of the whole.

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

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

ORDERS OF THE DAY.

On motion of Mr Mayfield, the Convention resolved itself into committee of the whole, on the report of the Judiciary Committee, Mr. Mayfield in the chair.

In the 9th section, Mr. Holland moved to strike out "less" and insert "more." Lost.

Mr. Jewett offered an addition sectional providing for the Impeachment of judges, which was adopted.

Mr. Evans proposed an addition to the 10th section, providing that juries shall assess the fines imposed in criminal cases, and the amount of punishment, except in capital cases. Adopted.

In the 11th section, Mr. Henderson moved to strike out "amounts to" and insert "exceeds." Adopted.

Mr. Lewis moved to strike out "one hundred" and insert "fifty." Lost.

Mr. Scott moved to strike out "one hundred," and insert "two hundred," as he was in favor of speedy justice. Lost.

Mr. Davis offered a substitute for the 12th section, providing for the election of the Attorney General and District Attorneys by joint vote of both Houses, for two years. Adopted.

Mr. Henderson moved to strike out "two" and insert "four" for the Attorney General. Lost.

Mr. Ochiltree proposed to add that their duties, salaries, and perquisites shall be prescribed by law. Adopted.

In the 13th section, Mr. Davis offered an amendment: "the sheriff shall not be eligible for more than four years in every six." Adopted.

Mr. Hemphill proposed an additional section to come in between the 11th and 12th providing for the election of a clerk of the District Court, by the qualified voters of the county, to hold his office for four years.

Mr. *Forbes* moved to strike out "elected by qualified voters," and insert "appointed by the judge." He had seen the bad operation of the election of officers of that character by the people; and so far from the people caring about it, he was very well convinced that they would rather have this privilege taken from them. He had seen records made out in some counties, which it was almost impossible to decypher.

Mr. *Darnell* said that the people of his county want to elect their clerks; they want no appointment. But if the gentleman choose to make such a provision for his own county, he had no objection.

Mr. *Forbes* said he believed the people of Texas generally were in favor of that mode; he believed they would be perfectly satisfied with any arrangement which would conduce to the public good.

Mr. *Ochiltree* said he agreed with the gentleman that there were some very hard cases now in some parts of the country among the district clerks. He thought, however, that three or four heavy fines would bring them up standing, or oblige them to get deputies who are qualified. He should dislike very much to see the right to elect then taken from the people.

Mr. Forbes' amendment was rejected.

Mr. Woods moved to strike out "four" and insert "two" for the term of office. If incompetent he was not likely to be elected again: if competent, he probably could be. It seemed to him that no inconvenience could arise from the amendment.

Rejected; and the additional section adopted.

In the 14th section, Mr. Lipscomb moved to strike out the word "them," to the word "case," and insert the following: "When the Supreme Court, or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, or when no judgment can be rendered in any case or cases in said court, by reason of the division, in opinion, of said judges, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of said case or cases." The word "equal" was inserted before "division," at the suggestion of Mr. Baylor, and the amendment was adopted.

Mr. Wright moved to insert "directly or indirectly," before "interested." Lost.

In the 15th section, Mr. Howard moved to strike out all after the word "estates," leaving the regulation of inferior courts to the Legislature. Stricken out.

Mr. Hemphill moved to add, "and the district courts shall have such jurisdiction over said inferior tribunals, and over executors, administrators, guardians, and minors, as shall be prescribed by law."

Mr. *Brown* proposed a substitute for the whole section and the amendment, the object of which was to give the probate court exclusive original jurisdiction, and let errors be rectified by the district courts. The substitute was rejected; and the amendment of Mr. Hemphill adopted.

Mr. *Ochiltree* thought the whole section superfluous, as its objects were amply provided for in the first section. He moved to strike out the 15th section as amended.

Mr. *Jewett* was opposed to striking out: the first section says *may* establish: this makes it imperative upon the Legislature to establish these inferior courts.

Mr. *Van Zandt* said: If the 15th section is stricken out, the effect will be, that the present probate system will be fastened upon us perhaps for years to come. If he had ever witnessed any system calculated for carrying on frauds, it was the probate court system. He believed in some counties the fees of lawyers in that court are greater than the amount which the estates are worth.

Mr. *Ochiltree* said, that in this country there had been in these courts the foulest management he had ever known. But he did not see how that section could remedy it at all. The Legislature, at last, will have to prescribe what sort of courts we shall have, and under what rules and regulations.

Mr. *Cunningham* was opposed to striking out. He thought the section very imperfect: but he wished it to be kept in the report, in order that the whole matter might be again referred.

The committee refused to strike out; and the section as amended was adopted.

Mr. Love proposed an additional section. "In all actions pending in the district courts, whether in law or equity, either party, upon application, shall have the right of trial by jury; in all actions arising out of a contract, before any inferior tribunal, where the amount in controversy shall exceed ——— dollars, either party upon application shall have the right of trial by jury; and in all cases where a Justice of the Peace or other judicial officer of inferior tribunals shall have the right to fine or imprison for any violation of a penal statute, the accused shall have the right of trial by jury."

Mr. *Howard* said: that this would effect a very important change in chancery practice. The rule is, that the chancellor, if he chooses, may determine every thing in a case: if he sends it to the jury, it is merely to enlighten his own conscience.

Would you shut twelve men up in a room to examine a complicated account which had been running for twenty years? It would strike him that a jury trial of that sort would amount to a denial of justice. It was to put a jury at a matter for which they are entirely incompetent. There are other cases where it is not desirable. Take cases of fraud, which have elicited a great deal of public feeling. It would be impossible to find a jury who had not made up their minds. He thought the rule in chancery wise and salutary, following the practice in England, in New York, and other States which have retained one court at least where slang-whang is not the rule of decision.

Mr. *Love* said: In Virginia and Kentucky, as a point of practice, it is not very usual to have juries in chancery trials; but in many cases they are applied for, and in many desired by the judges. In those complicated cases, the mode of practice is to refer them to an auditor, who is subsequently examined in court. The jury will understand the nature of accounts as well as the court. For his own part, he would as soon trust a complicated chancery case to a jury as to a judge. Nine times out of ten, juries are found more disposed to do justice than the chancellor. If the jury do wrong, there is a remedy by new trial and appeal. He thought it the best way under our system to decide all cases.

Mr. President *Rusk* said: It might be true that some inconveniences might arise from the adoption of this proposition; no very great evil, however, could result. The right of trial by jury is asserted in our constitution; it is considered both in the English and the American law as an inviolable right. It would seem that it should be extended to all cases of public importance. Next to doing public justice, says a distinguished law writer, giving general satisfaction is an important object. It strengthens the hands of those who administer the law, and gives it a stronger hold upon the affections of the people. It is a dangerous principle to trust too much power in the hands of one man. Would it not be better to trust a power of this nature in the hands of twelve men, than to confide it to the breast of one? By adopting this, you do not take away the responsibility of the judge himself. He has not less the control of the case: when it goes before the jury, he can deliver his opinions of the law, and the rule of decision. Parties will go away much better satisfied than if the decision depended upon a single judge; and it will have a good effect so far as the substance and support of the tribunals are concerned.

Mr. *Howard* said: He did not consider general satisfaction as the sole and entire object of courts of justice. Pontius Pilate gave very general satisfaction when he crucified Jesus Christ. But it did not follow that he was right. Right is the matter to be looked at; it should be the object of courts of justice to secure right, though against the popular feeling and interest. When a man is accused of great crimes, popular feeling is generally strong against him; we are not, however, because it may satisfy the craving of a vitiated public appetite, to hang him. Give independence to the judiciary of the country; and they will do right, and be deaf to public clamors. To say that public opinion is always right, is a stretch of opinion to which he should never go, whether here or elsewhere. He was in favor of innovating so far as is necessary to secure human right, but did not wish to sacrifice a great principle established for centuries to mere abstract notions.

Mr. *Love* thought the gentleman had made a good speech against the right of trial by jury in all cases. When the chancellor himself undertakes to investigate cases of the class before alluded to, ninety nine times out of a hundred he takes the report of the master in chancery, unless objections are made, as true. He thought it a better and safer remedy to go to the jury in these cases. He had noticed in his practice that a common-sense and intelligent jury could unravel them better than the judge, because it is not his business; and every man of them is familiar with accounts; and they almost always decide a case in the manner it ought to be decided. You will often hear litigants cursing judges for improper decisions; but very seldom if they have had a jury. In that case they go home, at least satisfied that they have had a fair chance. The system which he proposed is pursued in Pennsylvania, Virginia, and Kentucky; how many other states he did not know; and he had never heard any complaint with regard to its operation.

Mr. *Henderson* said: He was opposed to the proposition, because it is innovating upon well established principles, and the situation of the country does not require it. And he thought the gentleman from Galveston would be hard run to find precedents in support of his position. He was in favor of retaining this power in the judge; because he is learned in the principles of equity, and able at all times to apply the same rules to each case. If you give it to the jury, in most cases they will be operated upon by prejudices connected with the particular case; they will be in favor of one individual and against the other. It would take away the power of enforcing the rules of equity alike in all cases a jury would decide diff rent cases in a different way; whilst the judge, who knows the law, is bound to administer it in the same way at all times.

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

On motion of Mr. Howard, Mr. Kinney was added to the committee, to whom was referred the subject of the apportionment of representation, and taking the census.

The Convention adjourned until 4 o'clock, P. M.

4 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. Scott in the chair.

The additional section of Mr. Love under consideration.

Mr. *Armstrong* said: I hope the committee will consider well before they adopt that section, which I think will operate very injuriously. I think the trial by jury one of our most valuable institutions, when properly applied; but the best and noblest institutions may be perverted to the worst of purposes. We might as well authorize the jury to sign the minutes and punish the judge for contempt. I am astonished to see gentlemen who have so stoutly maintained the independence of the judiciary, now disposed to give every thing to the jury, and leave the court naked and impotent, a mere shadow, an individual mounted upon a bench for the jury to laugh at. The proposition amounts to nothing more nor less than to strip the court of every prerogative, and give to the jury the law, equity, and facts, to do as they please. It would be better, in my opinion, to leave it to the legislature to apply these things; it is enough for us to say in the constitution that the trial by jury shall be preserved inviolate. If we intend the jury to determine every thing, it would be better to dispense with the judge altogether, as a useless appendage of the court.

Mr *Moore* was in favor of authorizing a jury to be impannelled by a justice of the peace, in order to decide important questions which often arise before the justices of the peace. He thought a great deal of expense would be saved to the state, if assault and battery cases could be decided by a jury impannelled by a justice of the peace. They frequently occupy the district courts during a large share of the session; and a great portion of the expense of witnesses and juries is thrown upon the county or state. He thought that nothing which could be adopted would tend more to elevate the morals and character of the people, than to give justices of the peace the control over these petty offences.

Mr. *Lipscomb* proposed to add the words "where matters of fact are to be inquired into." That would leave matters of fact to go to the jury, and matters of law where they should go, to the judge.

Mr. *Love* said. There is certainly some misconception on the part of some gentlemen with regard to the amendment. It is nothing more

nor less than giving justices the same power which they have in common law practice; nothing more than to give the decision of a case to the jury under the instruction of the court. It is not an innovation as far as the practice in many states is concerned It has prevailed in Kentucky from its organization up to this day; and there has never been a single proposition made in the legislature, to take that power from the jury. In point of practice it is not frequently resorted to; very rarely indeed, unless from existing circumstances, one or other of the parties is induced to believe that entire justice will not be done by the judge. They cannot refuse a judge, unless interested in the event of the action. But there are many cases where a direct interest cannot be fixed upon the judge, and yet circumstances, the influence of families, and others, may produce in the minds of litigants a belief that entire justice will not be done them by him. I shall object to the addition to my section. What injury can arise from leaving the jury to determine according to the law and the evidence before them, any more than in complicated common law cases? Under the existing system, every possible thing almost that can occur in the trial of a cause in chancery, does arise in that of a common law cause.

With regard to the other portion of the section touched upon by the gentleman from Harris, I will make one or two remarks When a fight takes place in the streets in Kentucky, the parties are taken before a justice of the peace, tried and fined, and there is an end of it. By the practice in Texas, they are brought before the district court, and the costs they have to pay are twenty times as much as the justice of the peace would exact. This system has worked well in Kentucky, with regard to the morals of the country.

Mr. *Ochiltree* said: That with regard to the latter clause of the section, he agreed with the gentleman from Galveston. And if it is consistent with the bill of rights, he should like to see it adopted. But he doubted whether it would be competent for justices of the peace to try summarily cases of assault and battery, whilst we declare in the bill of rights that all prosecutions shall be by indictment or information. He would like to see the justices of the peace have that jurisdiction.

Mr. Lipscomb's amendment was rejected.

Mr. *Hemphill* said: I cannot say that I am very much in favor of either chancery or the common law system. I should much have preferred the civil law to have continued in force for years to come. But inasmuch as the chancery system, together with the common law, has been saddled upon us, the question is now, whether we shall keep up the chancery system, or blend them altogether. If we intend to keep it up as it is known to the courts of England, the United States, and many of the states, and United States courts will be established here, we should op-

pose this innovation; for I do not know any alteration which could be a greater innovation, than to subject all chancery cases to a trial by jury. It is well known that the trial by jury has been esteemed as highly in England, whence we derive it, as in any country in the world. A great deal of blood has been shed to preserve it; but I have never known or heard that it was ever thought of, to extend it to cases in equity, admiralty, or the ecclesiastical, what we call the probate court. It was never supposed that justice or right could be dispensed in these courts by the trial by jury. All our notions of the trial by jury and its benefits are drawn from England; y t there we find, that in courts of equity, admiralty, maritime jurisdiction, or the ecclesiastical courts, such a thing was never heard of. In practice, it is sometimes the case, that the judge directs issues of fact to be tried by a jury, when the verdict is sent up to him; it is possible that he will disregard the verdict of the jury, but almost always he recognizes and proceeds upon the finding. If we now introduce the trial by jury into the chancery system of this country, let us suppose a case by which the Convention will see its operation. Suppose the district court to have jurisdiction over all settlements of accounts in successions; suppose one to be settled of twenty years' standing, and that the administrator is called to account for his management of the estate. He is obliged to produce his accounts year by year, and item by item; he must produce his vouchers, and all the evidence necessary to prove them. The next question is, was this a proper account? And in the discussion all the doctrines relating to community, to partnership property, to the relation of husband and wife, necessarily arise; all the laws affecting these matters, whether those of Spain, Mexico, Coahuila, or Texas, or our own laws, before the introduction of the common law, must be produced. Many cases come up before a chancery court in which there is no necessity for a jury; as in the division of an estate, where one heir files a bill in chancery calling upon another to answer, why it should not be divided. I cannot see how a jury could possibly be introduced in a case of that kind. If you take ecclesiastical or probate cases, I cannot see any necessity for the introduction of a jury. In granting letters testamentary, or taking the probate of a will, and many other cases, I see no such necessity. I still think there is some objection to the chancery practice, as it exists in England and many of the United States. There are some cases in chancery where a jury might be advantageous, as, for instance, where a suit is brought to recover a lost note, or in questions relating to the making of a will, whether it was made as alleged in the will, whether the testator, at the time of signing, was in his right mind or not, and so on; because the jury will know the witnesses, and all the persons interested, and give the testimony its proper weight. I should like to see the matter accommodated in some way. I think the amendment of the gentleman from Washington, which has been rejected, is perhaps a proper one. I will only suggest, that when the United States courts

shall be established here, the practice in those courts will be that which is known to the common law of England, without innovation, so far as chancery is concerned.

Mr. *Davis* said: The gentleman who has just addressed the committee seems to find his principal objection in cases involving the settlement of accounts. Now, it will be recollected, that the amendment provides for a jury only in cases where it is desired by either party. In cases where it is not necessary, it is not probable that either party will desire it. I will ask gentlemen who know any thing of chancery, if the settlement of accounts is not a very small part of the business which comes into chancery? But would there be anything improper in bringing accounts before a jury? I see no great difficulty in the matter. The accounts are prepared and classified, and submitted to the jury under the charge of the court. And in all probability there would not be one case in fifty, where accounts are to be settled, in which either party will ask for a jury. We are told that by the adoption of this proposition, we strip the judge of every prerogative; that it is then not necessary to have a judge, but only to impannel a jury. But I would ask, if a jury is competent to determine the facts in common law cases, if it is not equally so in cases of equity? I must acknowledge that I do not pretend to any extensive information as a jurist. But I will say, that I have never yet seen the good sense of dividing cases, and establishing courts of equity. I have never seen any reason why all cases should not be tried in a court of law upon equity principles. Gentlemen call this an innovation. Sir, if our fathers had not innovated, where would our present government have been? I ask legal gentlemen to say if the common law has not been innovated upon in England and the United States? We profit by experience; and no people will ever make any improvements of any character whatever, if they confine themselves to established principles. The immense improvements made in government and every thing else are the consequence of innovation. I maintain the opinion that the reason why the system proposed by the gentleman from Galveston, has not been adopted in most of the states, is to be found in this very fear of innovation.

Mr. President *Rusk* said: The object, Mr. Chairman, of all investigation in courts of justice, is to arrive at facts and do justice between parties. Then that method which is the most certain, the most speedy, and the least expensive, is the best that we can adopt. Gentlemen who are so much alarmed at the idea of innovation, have confined themselves in their arguments to two single objections: one, that a jury, being stupid or asleep, would be totally incapable of determining upon the justice of accounts; and the other, that a jury is not as competent to determine a question of fraud, as a judge upon the bench. These are all the arguments adduced against this great encroachment. I do not

look upon it as a great encroachment, but if it is, as it has been remarked, that the court of chancery originally stole all its jurisdiction from the courts of common law, I think it nothing but right and proper, and a fair retaliation, for this Convention to restore it. Gentlemen also tell you that it is better to leave the matter entirely to future legislation; that you are wading in deep water, and establishing principles here, the operation of which you cannot understand. Now, sir, the legislature has brought all things into confusion. Immediately after the revolution it was determined that one court should have jurisdiction over all cases, rejecting the useless distinction between law and equity, which has since grown up. And I believe, when properly investigated, in the light of time and experience, that this system will be found the best, the plainest, the cheapest, and most free from objections of any, and that it will arrive at the end, the administration of justice, better than any other. But the legislature has introduced this useless distinction between courts of law and those of equity. Past experience convinces me that the legislature, in place of making matters of this nature plain, will but make them the more confused. I have been thrown into the position, with gentlemen who support this measure, of seeking to make a great innovation. I will repeat the remark from Blackstone, that next to doing right, the great object is to give general satisfaction. I think it a just one now, and that it will be correct throughout all time. When cases are to be decided, the eternal principles of right and wrong are to be first considered, and the next object is to give general satisfaction in the community. For if once you array the judiciary against the people, you do not add to the independence of the former, but you produce a direct collision, in which the judiciary must inevitably suffer. It is said that a jury is incompetent to decide in the settlement of accounts of twenty years' standing. Now, if we do not adopt some plan by which accounts will be settled before the expiration of twenty years, it will be of no use to go into courts of equity, because it would consume the estate. It ought to be the object to bring about short settlements, so that no accounts should be to be settled of twenty or thirty years back, when the witnesses might be dead, and the circumstances forgotten, and it might be impossible to administer justice. It has been said that a jury is totally incompetent to determine in matters of fraud. I cannot see this; it seems to me that the reverse is the case. The chancellor is engaged in various other matters; his mind is taken up with a multitude of duties; he is not acquainted with the neighborhood and the circumstances connected with the transactions; he is not in the habit of reasoning upon the conduct of men in such situations to any great extent. The jury judge by the countenance of a witness, whether he speaks the truth and to what extent; and they are better acquainted with the circumstances. The arguments which would go against a section of this kind, go against the right of trial by jury at all. They proceed upon the ground, that juries are incompetent to discharge the duties submit-

ted to them by the law. Now, if they are incompetent in cases of equity they are equally so in suits at law. But is it in accordance with reason, that twelve men should be less competent to detect fraud, or to determine a matter of accounts between man and man, than one? And if a man's case is submitted to the jury before the court, whose duty it is to charge the law, and the twelve men determine against him, he does not go away abusing the organs of the law; he comes to the conclusion that he is in the wrong. Whereas, if one man sits and judges the entire matter, because it is a case in equity, I will venture the assertion, that nine times out of ten he will go away dissatisfied.

The amendment was adopted as an additional section.

Mr. *Armstrong* offered an amendment, providing for the election by qualified voters, of a Board of County Commissioners in each county. Rejected.

On motion of Mr. Parker, the committee rose, reported various amendments, and asked leave to be discharged from the further consideration of the Report. Report adopted.

On motion of Mr. Van Zandt, the report of the Committee on the Judiciary Department was laid on the table, for the present.

Mr. Van Zandt, chairman of the Committee on the Bill of Rights and General Provisions of the Constitution, made the following report:

Committee Room,
July 28th, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The committee, to whom was referred the "General Provisions of the Constitution," and sundry resolutions in relation thereto, have had the same under consideration, and have instructed me to report the following provisions, and respectfully recommend their adoption.

ISAAC VAN ZANDT,
Chairman of Com. on B. of R. and G. P.

GENERAL PROVISIONS.

Sec. 1. Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation:—"I (A. B.) do solemnly swear, (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the Constitution and Laws of the United States, and of this State; and I do further solemnly swear, (or affirm) since

the adoption of this Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it; nor have I sent or accepted a challenge to fight a duel with deadly weapons; nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person, thus offending—so help me God."

Sec. 2. Treason against this State, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Sec. 3. Every person shall be disqualified from holding any office of trust or profit in this State, who shall have been convicted of having given, or offered, a bribe to procure his election or appointment.

Sec. 4. Laws shall be made to exclude from office, and from the right of suffrage, those who shall, hereafter, be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported, by laws regulating elections; and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper practice.

Sec. 5. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it; or who shall act as second, or knowingly aid and assist, in any manner, those thus offending, shall be deprived of holding any office of trust or profit under this State.

Sec. 6. In all elections by the people, the vote shall be by ballot, until the Legislature shall otherwise direct; and in all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given *viva voce*—except in the election of their officers.

Sec. 7. No money shall be drawn from the treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years. A regular statement and account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

Sec. 8. All civil officers for the State at large, shall reside within the State; and all district or county officers within their districts or counties; and shall keep their offices at such places therein, as may be required by law; and no person shall be elected or appointed to any county office, who shall not have resided in such county long enough before such election or appointment, to have acquired the right of voting in such county; and no person shall be elected or appointed to a district office, who shall not have resided in such district long enough before such appointment or election to have acquired the right of voting for the same.

Sec. 9. The duration of all offices not fixed by the Constitution, shall never exceed four years.

Sec. 10. Absence on the business of this State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this Constitution.

Sec. 11. The Legislature shall have power to provide, by law, for deductions from the salaries of public officers, who may be guilty of a neglect of duty.

Sec. 12. The Legislature may point out the manner in which a person coming into this State shall declare his residence.

Sec. 13. No member of Congress, nor person holding or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this state.

Sec. 14. The Legislature shall direct by law, how persons who are now, or may hereafter become, sureties for public officers, may be discharged from such suretyship.

Sec. 15. The Legislature shall provide by law, for a change of *venue*, in civil and criminal cases.

Sec. 16. It shall be the duty of the Legislature, to pass such laws as may be necessary and proper, to decide differences by arbitration.

Sec. 17. No lottery shall be authorized by this State; and the buying or selling of lottery tickets, within this State, is prohibited.

Sec. 18. No divorce shall be granted by the Legislature.

Sec. 19. It shall be the duty of the Legislature, as early as possible, to pass laws defining the rights of married women, upon a principle of community of property between husband and wife, having a due regard to the rights of heirs and creditors.

Sec. 20. The Legislature shall have power to pass laws prohibiting, under such modifications as they may think proper, the separation of the families of slaves by private or public sale.

Sec. 21. The rights of property, and of action, which have been acquired under the constitution and laws of the Republic of Texas, shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void, by the Constitution and laws of the Republic of Texas, be re-invested, revived, or re-instated, by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution.

Sec. 22. All colonization contracts, for settling the vacant and unappropriated lands of the Republic of Texas, heretofore made with the President thereof, shall be suspended, and cease from and after the adoption of this Constitution by the people of Texas; but the rights to lands, of actual settlers already introduced in conformity with the terms of the contracts, are, hereby guaranteed; and the Legislature shall have the power to pass laws necessary for maintaining the same; and laws to enable the contractors (who entered into the contract with the

President) to institute suits against the State, for the recovery of any indemnity to which they may be equitably entitled.

Sec. 23. The Legislature shall have power to protect, by law, from forced sale, a certain portion of the property of all heads of families, and in all cases, the homestead of a family, not to exceed 160 acres of land, shall be exempt from sale by execution.

Sec. 24 The Legislature shall provide by law, in what cases officers shall continue to perform the duties of their offices, until their successors shall have been inducted into office.

Sec 25. Every law enacted by the Legislature, shall embrace but one object, and that shall be expressed in the title.

Sec. 26 No law shall be revised or amended, by reference to its title; but in such case, the act revised, or section amended, shall be re-enacted; and published at length

Sec. 27. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace.

Sec. 28. Taxation shall be equal and uniform, throughout the State. All property on which taxes may be levied, in this State, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied. The Legislature shall have power to lay an income tax; and to tax all persons pursuing any occupation, trade, or profession.

Sec. 29 No corporate body shall, hereafter, be created, renewed, or extended, with banking or discounting privileges.

Sec. 30. Corporations shall not be created in this State, by special laws, except for political or municipal purposes; but the Legislature shall provide, by general laws, for the organization of all other corporations, except corporations with banking or discounting privileges, the creation of which is prohibited.

Sec. 31. No corporation, hereafter to be created, shall ever endure for a longer term than ——— years, except those which are political or municipal, and two thirds of the Legislature shall have the power to revoke and repeal all private corporations, by making compensation for the franchise.

Sec. 32. The aggregate amount of debts hereafter contracted by the Legislature, shall never exceed the sum of one hundred thousand dollars, except in case of war, to repel invasions, or suppress insurrections, unless the same be authorized by some law, for some single object or work, to be distinctly specified therein; which law shall provide ways and means, by taxation, for the payment of running interest during the whole time for which said debt shall be contracted, and for the full and punctual discharge, at maturity, of the capital borrowed; and said law shall be irrepealable until principle and interest are fully paid and discharged; and shall not be put in execution until after its enactment by the first Legislature returned by a general election, after its passage.

Sec. 33. No new county shall be established by the Legislature, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles; nor shall any county be laid off, of less contents. Every new county, as to the right of suffrage and representation, shall be considered as part of the county or counties from which it was taken, until entitled, by numbers, to the right of separate representation.

Sec. 34. The Legislature shall have power to extend this Constitution, and the jurisdiction of this State, over any territory acquired by compact with any state, or with the United States. The same being done with the consent of the United States.

Sec. 35. Any amendment or amendments to this Constitution, may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of two thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on the journal, with the yeas and nays thereon; and the Governor of the State shall have the said amendment or amendments published in all the newspapers printed in this State, at least three months previous to the next general election to be held for representatives in said State; and shall order the returning officers to open polls for said amendment or amendments, and return the same to the Secretary of State, in the same manner as other election returns are made, who shall deliver said returns to the Speaker of the House of Representatives, and they shall be opened and counted in the presence of both Houses of the Legislature; and if the majority of the electors shall have voted for said amendment or amendments, then the Legislature shall declare the said amendment or amendments to be a part of this Constitution, and incorporate the same accordingly.

IMPEACHMENT.

Sec. 1. The power of impeachment shall be vested in the House of Representatives.

Sec. 2. Impeachments of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and of the Judges of the District Courts, shall be tried by the Senate. The Chief Justice of the Supreme Court, or the Senior Judge thereof, shall preside during the trial of said impeachment.

Sec. 3. Impeachments of Judges of the Supreme Court, shall be tried by the Senate. When sitting as a court of impeachment, the senators shall be upon oath or affirmation; and no person shall be convicted, without the concurrence of two-thirds of the senators present.

Sec. 4. Judgment, in cases of impeachment, shall extend only to removal from office, and disqualification from holding any office of honor, trust, or profit, under this State; but the parties convicted shall,

nevertheless, be subject to indictment, trial, and punishment, according to law.

Sec. 5. All officers against whom articles of impeachment may be preferred, shall be suspended from the exercise of their functions, during the pendency of such impeachment; the appointing power may make a provisional appointment to replace any suspended officer, until the decision on the impeachment.

Sec. 6. The Legislature shall provide, by law, for the trial, punishment, and removal from office, of all other officers of the State, by indictment, or otherwise.

SCHEDULE.

Sec. 1. That no inconvenience may arise, from a change of separate national government to a permanent state government, it is declared that all process which shall be issued in the name of the Republic of Texas, prior to the —— day of ——— next, shall be as valid as if issued in the name of the State of Texas.

Sec. 2. The validity of all bonds and recognizances, executed to the President of the Republic of Texas, shall not be impaired by the change of government, but may be sued for, and recovered, in the name of the Governor of the State of Texas, and his successors in office; and all criminal prosecutions, or penal actions, which shall have arisen, or may arise, prior to the —— day of ———, or which may be pending within the limits of this State, on the —— day of ———, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution, in the name of said State. All suits at law and equity, which may be depending in any of the courts of the Republic of Texas, on the —— day of ———, shall be transferred to the proper court of the State, which shall have jurisdiction of the subject matter thereof.

Sec. 3. All laws, and parts of laws, now in force in the Republic of Texas, which are not repugnant to the provisions of this Constitution, shall continue and remain in force, as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof.

Sec. 4. All fines, penalties, forfeitures, and escheats, which have accrued to the Republic of Texas, under the Constitution and laws, shall accrue to the State of Texas; and the Legislature shall, by law, provide a method for determining what lands may have been forfeited or escheated.

Sec. 5. All officers, civil and military, now holding commissions under the authority of the Republic of Texas, shall continue to hold and exercise their respective offices, under the authority of this State, until they shall be suspended under the authority of this Constitution.

Which report was read; and, on motion of Mr. Cazneau, 500 copies were ordered to be printed.

Mr. Van Zandt, chairman of the Committee on General provisions, reported back to the Convention, sundry resolutions which had been referred to said committee, and recommended the same to be laid on the table; which report was adopted.

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

Tuesday, July 29th, 1845.

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

O, thou, who gavest breath to nature, and life to man, grant us this morning, that which we cannot have by nature, grace, that we may serve thee to divine acceptance. We pray thee this morning, oh, Lord, to prepare us for each and every event that awaits us in future life. With sentiments of gratification upon our hearts for the mercies and blessings which thou hast vouchsafed to us. Guide us by thy councils this day: grant that the words of our mouth, and the meditations of our hearts may be acceptable in thy sight, oh, Lord, our strength and our Redeemer. Let thy blessings rest upon this convention; preside over their deliberations, that all they do may redound to thy glory. Grant, we pray thee, relief to the oppressed, and succor to the tempted. Prepare the dying for a glorious immortality at thy right hand; and qualify the living to live to thy honor and glory. Remember all we should pray for every where; bless the means of thy appointment, the ministry of thy word. Do more for us, we entreat thee, than we are able to ask, or worthy to receive. And, finally, save us with thy everlasting salvation; through Christ, our Redeemer, Amen.

Mr. Runnels offered the following resolution:

Resolved, That the committee on General Provisions of the Constitution, be instructed to enquire into the expediency and propriety of incorporating in the Constitution, the following provisions:

SLAVES.

1st. The Legislature shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants of this State from bringing with them, such persons as are deemed slaves, by the laws of any one of the