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

United States, so long as any person of the same age and description shall be continued in slavery, by the laws of this State: Provided, that such person or slave be the *bona fide* property of such immigrants; and, provided, also, that laws may be passed to prohibit the introduction, into this State, of slaves who have committed high crimes and in other states or territories. They shall have full power to oblige the owners of slaves, to treat them with humanity; to provide for them necessary food and clothing; to abstain from all cruelties to them; and in case of their neglect or refusal to comply with the requisitions of such laws, to provide, by law, for the sale of such slave or slaves, for the benefit of the owner or owners.

2d. In the prosecution of slaves, for crimes of higher grade that *petit larceny*, the Legislature shall have no power to deprive them of an impartial trial, by a petit jury

3d. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offence had been committed on a free white person and on the like proof, except in case of insurrection of such slave.

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

Mr. Horton offered the following resolution:

Resolved, That this Convention, in behalf of the people of Texas, tender to the Hon. Robert J. Walker, their profound consideration and gratitude for the great and untiring services he has rendered them, as one of their earliest, best and most efficient friends, in procuring the recognition of their independence, and consummating the great and glorious work of annexation.

On motion of Mr. Van Zandt, the rule requiring the resolution to lie on the table one day for consideration, was suspended, and the resolution unanimously adopted.

On motion of Mr. Horton, the President and Secretary of the Convention, were requested to sign the resolution, and forward the same to the Hon Robert J. Walker.

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

ORDERS OF THE DAY.

The amendments of the committee of the whole, to the report of the standing committee on the Judiciary Department, being first in order, were taken up.

The amendment of the committee, to the 3d section, is as follows:

After the word "State," in the 21 line, insert "in all civil cases, and in all criminal cases, it shall be competent for any one of the Judges of

the Supreme Court to grant a supersedeas, and grant a writ of error, returnable to the said Supreme Court, if, in the opinion of the Judge to whom application has been made, error in law has intervened."

Mr. *Baylor* said: I hope the amendment will not be made. It is with great reluctance that I differ in opinion from the experienced gentleman who proposed it. I have great confidence in the soundness of his opinions generally; but in this case, with the best reflection I have been able to bestow upon the amendment, I have been brought to the conclusion that it will work no good effect. If the amendment prevail, the result, as I view it, will be this: as extensive as our country is, with the various districts which will necessarily be laid off by law, in many portions of the country the district judge, in going around his circuit, may have little or no access to authorities. Suppose a case of great moment upon trial: the whole talent of the bar is arrayed on the side of the accused: his attorneys have only to make a great variety of points, and to take their bills of exception: and it would be an extraordinary thing indeed, if the judge, shut out from all lights, did not decide some one of the points wrong. And if he committed a single error, the counsel of the accused would only have to present it to one of the Supreme Judges, and upon inspection of the record, he would be necessarily bound, under the contemplated amendment, to grant a supersedeas and writ of error. This would create delay; it would give the accused many opportunities of escape, and would necessarily produce a great amount of expense to the country. I venture to predict, if the amendment is retained, that in the trial of every criminal cause, a great number of bills of exception will be taken, and whether there be error in the opinion of the court below or not, the application will be made for delay, and if the judge is a humane and good man, he will necessarily put off the execution of the sentence for a sufficient time to ascertain whether there is error or not. It will practically work as a general gaol delivery. In making arrangements of this kind, we must take into consideration the circumstances of the country. There is no country scarcely, which has a good and sufficient jail; and as yet we have no penitentiary in the country. But if the amendment which I shall propose is adopted, the whole matter will be left to the Legislature. As society improves, as jails are built, and the means of confining prisoners provided in the various counties, the Legislature can extend the remedy of appeal in criminal matters.

I do hope the amendment will not prevail; but that the one which I propose will be adopted in its stead.

Mr. Baylor offered the following, as a substitute to the amendment of the committee:

After the word "State," in 2d line, insert "but in criminal cases, with such exceptions, and under such regulations as the Legislature shall make;" which was adopted in lieu of the amendment of the committee.

In the same section, 3d line, after the word "issue," insert the following: "the writ of habeas corpus and under such regulations as may be prescribed by law, may issue;" which amendment of the committee was adopted.

The amendment of the committee to the 8th section: strike out all in brackets, which is "[and each district shall not contain more than seven counties.]" was adopted.

The amendment of the committee to the 9th section, 4th line, is as follows: insert after the word "be," the words "increased or."

Mr. *Mayfield* said: I think the word "increased" ought not to be inserted in that clause. It is contended that the State will be poor, that her revenues will be greatly diminished, in consequence of the change of government, and that we must make the salaries of officers low for a few years. In that opinion perhaps every member of the Convention will concur. They must be made low until such time as the State becomes fully established, until her resources are ascertained, taxation is settled, and the collection of revenues insured. But I believe it is in accordance with the feeling and disposition of every member of this body, that, so soon as the revenues of the State will allow it, the salaries of the judges shall be increased from the minimum proposed. For myself, I am one of those who believe that affording an adequate salary to judicial officers, is one among the guarantees which the people have of their independence of character, as it places them in a great measure beyond the influence of popular commotions. If forced, in some degree, to yield my opinions upon this subject, I can still see no reason why we should deprive the legislature of the country, when its resources increase, from increasing the salaries, and giving those officers something like an adequate compensation for the services they are called upon to render. It is evident that the best talent, virtue and patriotism cannot be obtained upon the bench, if salaries are fixed at too low a standard. In a country like ours, where a man's situation upon the bench is so precarious, and no man can live upon honor alone, you must attach to these offices something substantial, a compensation at least which will place him above want, and above the temptations which the profession holds out to him. You will by that means call to the judicial department of the government men of the best legal talent in the country; men in the full tide of practice, possessed of moral worth, learning and industrious habits necessary to give them reputation, practice, and control in their profession. But if you render their compensation small, if you make the salaries of judges merely nominal, you will have the tag-rag and bob-tail of all professions elevated to judicial stations; you will have neither learning, common integrity, nor independence of character. Those who possess energy, true learning, and the confidence of the country, making as they can, much larger sums annually, than the salaries attached to these offices, will not be seduced from the walks of their profession to take a position upon the bench.

am in favor of leaving out the word "increased." and if, in the opinion of gentlemen, the condition of the country is such as not to justify higher salaries at present, I wish to leave it in the power of the Legislature to increase them hereafter.

Mr. *Davis* said he hoped the amendment would be adopted. He was as much in favor of good salaries for the judges as the gentleman from Fayette, and disposed to give them, so soon as the country should have the ability to do so. If the amendment is adopted, whenever the State of Texas shall be able, it will only be necessary to pass a law increasing salaries *after that time*. Then if the judges are willing to risk a re-election, they can resign and receive the increased salary. He was in hopes it would pass; for he believed that the Legislature would, in all probability, make a law to increase salaries, and thus give us an opportunity of getting rid of those who in all probability, may not be so well qualified, as others who will be elected. If a man has discharged the duties of his office well, he will not be afraid to resign and run again; if not, he will get an ample compensation for the poor, and wretched and miserable service he will render.

Mr. *Lusk* said he should vote for the legislature to have the power to increase the salaries of the judges. He thought that men of talent might be induced to take these offices, with the expectation of increased salaries when the resources of the country should render it possible.

Mr. *Baylor* said: I have but little to say so far as the salary of judges is concerned: I feel some delicacy upon the subject, and leave it to the good sense of the Convention to fix upon any sum which to their judgment shall seem proper. This very point was debated at great length in the Convention which formed the Constitution of the United States, and after the most mature consideration, with all the light that could be thrown upon the subject, that august assemblage of great men refused to sanction the amendment now proposed by the committee of the whole. Dr. Franklin was decidedly opposed to retaining the word "increased;" for, said he, times might change, and what is a fair compensation at one time, might be inadequate at another; he thought it best to leave it to the Legislature, because, he thought, there was not much danger that salaries would ever be increased by that body, to any great extent. The Legislature could pass a law to operate upon all judges who might come into office after its passage. And if three or four ambitious men should wish to get in, they might raise the salaries, and no honorable judge would remain in his situation.

I do not think the country has the ability to pay very large salaries. I am disposed to be in favor of moderate salaries in the first instance, because our population is not very great, and our resources are not

ample. But at least let us leave a door open; let us leave the control of this matter hereafter to the good sense of the Legislature, as soon as possible to secure virtue upon the bench, and accomplished and scientific lawyers.

Mr. *Mayfield* said: By adhering to the term "increase," we shall exclude from the judicial bench all that class of the profession who are really eminently qualified and entitled to positions of that sort. Because when a position of this kind is offered to a gentleman of the profession, he will make a calculation of dollars and cents; for many hold honors as cheap in this country. Whatever honor, power or dignity it may confer, it will be rejected unless you place before him at the same time an adequate compensation for his labors, or at least as great a compensation as the resources of the country will justify. I will ask gentlemen to look forward in the history of the country, and say whether they can conceive of any time when greater virtue, more talent and decision of character will be required upon the bench, than in the first years succeeding its organization as a State; when the interest of the country will more imperiously demand men of the first legal attainments? When we look around us, we find on all sides exciting questions to be determined; there are questions to be settled yet only mooted; adjudicating to be made affecting the tenure by which every citizen holds his property; titles to be settled, upon which perhaps four-fifths of the land of the country reposes. This being the case, what inducements do we propose to hold out to secure this great object? You present on the one side the honors of the station, and according to the principles of some, with an uncertain and flimsy tenure, for a term of two or four years, dependent upon the whim of the Legislature or the caprice of the people, and to popular doctrine of rotation in office. It is necessary, Mr. President, that this arm of the government should stand upon an independent footing, to administer justice with a true scale and even balances. Now I would ask gentlemen from what branch of the profession they are forcing the country to select the judiciary, when they fix a tenure so uncertain, a term so short, and a salary so low, and depriving the Legislature of the power of increasing it hereafter?

The Legislature, as we learn from the history of the past, has kept up an eternal warfare with the judiciary. At one time it has reduced salaries, at another, districts; at another, changed the time of holding the Supreme Court from a healthy season of the year, sending it to a sickly hole, in order to kill off the whole of the judges. Now there were men called to the bench who had not been panders to the appetite of legislative assemblies; but men of character, men who were pointed out by the general voice as qualified for stations of this kind. There were two of these, a Jack and a Morris, who were thus compelled in the midst of Summer to leave their districts and homes, and travel to the town of Washington, to sit there as members of the Supreme Court.

It is unnecessary to trace the causes of their melancholy decease. As individuals, they had to pay the great debt of nature; but, sir, their loss to the country is another consideration. They are gone; their talents, their integrity, their learning, their decision of character, which adorned every station to which they were elevated, are no longer to be witnessed conferring benefits upon this beautiful and interesting country. There are some among those whom I address who will surely concur with me in the opinion, that such have been the fruits of the system adopted by the Legislature. And it appears to me upon this occasion, that this Convention is called upon peculiarly so to guard the judiciary department, that by no possible contingency shall its elevation of position be intruded upon, or its independent character in the least degree affected. Then let us in the adoption of this Constitution, hold out the very best inducements in our power, to call to the bench of the District as well as the Supreme Courts, the best talent, purity, patriotism, and the highest decision of character which may exist in the country.

Mr. *Lewis* thought all difficulties might be avoided by an amendment which he would propose. He thought the salary proposed was perhaps as much as the country at present will afford. But when we shall have more ability to pay an adequate compensation for the best talents of the country, it will be nothing but right that the salary should be increased.

He would propose this amendment, strike out after the word "during" last line 9th section, and insert "the term for which they shall have been elected." So that at any time after that, the salary may be increased. If elected for four years, they will receive 1500 dollars a year for that time.

The object is to prevent a change during the term, and not during their continuance in office. The judges might then resign, and avail themselves of the increase.

The amendment was rejected.

The question was then taken on the amendment of the committee, which was also rejected, by ayes and noes as follows:

Ayes—Messrs Armstrong of J. Brashear, Burroughs, Bagby, Darnell, Davis, Gage, Hicks, Holland, Irion, Jones, Latimer of R R., Latimer of L. Lewis, Lumpkin, McGowan, M'Neil, Moore, Parker, Power, Rains, Scott, Smyth and White—24

Noes—Messrs. President, Anderson, Armstrong of R, Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Evans, Everts, Forbes, Henderson, Hogg, Horton, Howard, Hunter, Jewett, Kinney, Love, Lusk, Lipscomb, Mayfield, Miller, Runnels, Standefer, Tarrant, Van Zandt, Wright and Young—31.

The amendment of the committee, to the 9th section, to fill the first blank with "$1500," was taken up.

Mr. Howard moved to strike out "$1500," and insert "$2,000," for the Judges of the Supreme Court.

Mr. *Forbes* said he should vote for rejecting the amendment, because he really thought the sum of 1500 dollars too small a salary for the judges of the Supreme Court, or even of the District Court. He could not see why these salaries should be less than in the neighboring southern States. He thought we required as much learning, talent, and virtue on the bench, as any of those States, and that the people in every part of Texas were willing to go for adequate salaries.

Mr. *Hogg* said: He believed that any man can live in this community for 1500 dollars a year. It is true that 500 dollars may seem a small amount to many persons, but that additional sum for the judges will make a considerable amount when collected by direct taxation. He was willing to see the district judges receive as large a salary as the judges of the supreme court; he thought perhaps their duties are more laborious.

Mr. *Howard* called for the reading of the Report of the Committee of Finance, as the only practical argument which can be made upon the subject: which was read.

Mr. President *Rusk* addressed the Convention. Mr. *Horton* in the chair. I regret very much, sir, the necessity which seems to be imposed upon me, at this stage of the report, to consume the time, or weary the patience of the Convention; but as I view it, we are now engaged in the most important branch of our labors; one which involves to a great extent the present prosperity or the future weal or woe of the people of Texas. I feel no very considerable interest in the arrangement relating to other officers in the various departments of the government. They will be under the control of the people; and if we adopt some erroneous plans in relation to them, they may easily be rectified. But if we make one false step here, we are forever gone. I would call the serious attention of the Convention to this matter. I do extremely regret to see a serious disposition manifested upon various occasions, on the part of gentlemen of age and talent, to make something like a war upon the judiciary. I look upon it as the sheet anchor of our rights. If we have an intelligent, honest, and correct judiciary, your position is safe; the rights of persons and property are safe. If, on the contrary, we have one which is swayed about by popular clamors, you are upon a sea without a compass; your rights of person are not safe; your property is not safe; the reputation of your country is endangered; all is anarchy and confusion. I say that hostility to the judiciary is made manifest, and in various quarters. In regard to the manner of selection strange opinions seem to be entertained and maintained, without calm

reasoning or reflection. An assault seems to be made upon the pay to be allowed the judges, upon the time which they shall serve, and all the various ramifications of the bill. There seems to be a serious disposition unfortunately manifested to render the office of judge one of uncertainty in point of tenure, in point of position and compensation. What are the duties which we expect to be discharged by the judges of the district and supreme courts? The country is agitated with various and conflicting claims, affecting, not only personal rights, but the political condition of the country. They are of such a nature, that in the course of their investigation and determination in the tribunals, much confusion, popular clamor, and ill feeling, on various sides, will assuredly be manifested. Should we then have a weak and vacillating judiciary, destitute of talent and integrity, with no merit beyond that of office seekers, who, if they cannot procure an important office will take a small one; if they cannot get good salaries will take small ones? Will you make the term of your judges a very short one, and give them a totally inadequate compensation? Will you subject them to the whim and caprice of popular excitement gotten up by demagogues traversing the land, circulating misstatements and sowing misconceptions every where? Or, will you make the term of their office respectable, the salary such as will decently and properly support them, and remove them from the influence of popular clamor? If you do this, you may expect to have men of talents and integrity upon the bench. If not; if you make a scramble for these offices, men of integrity and talent will not subject themselves to the evils they would have to encounter for a mere temporary position. To be a good judge a man must be a good lawyer. If he is a man of practical talents and integrity, he will necessarily have a lucrative employment. When the proposition is made to him to go upon the bench, he sits down and reflects that he is acquiring a competent living, without being set up to be shot at by the shafts of envy, malice, and detraction. Will he leave such a position to be on the bench a year or two, with an inadequate salary? Where is the inducement? On the contrary, you will drive such men from these positions, and fill them with men who are not guided by the great principles of justice; men who will be veered about by any particular interest or clamor. When you give an officer some length of time as a term of office, with a salary sufficient to enable him to live comfortably, and place him above the pinchings of want, you make the office responsible, and men of talent and purity of character will undergo its difficulties and risk its inconveniences. They will have, in the first place, a comfortable living, then a position which will last some time, opening the door to establish a name and reputation upon the bench, which will be of advantage in after life. I have thought, during this discussion, that we might derive a lesson from the well known prayer of Agur, in some of the writings of Solomon, "give me neither poverty nor riches." What is the petty sum of five hundred dollars,

when you take into consideration the alternative of placing men in office who will be acted upon by corrupt influences, and entrusting to them your life, your property, and the rights of your children after you? I am in favor of no high salary; but I would not place men upon the bench, and require them to discharge the high and sacred duties of that station, who are incompetent from poverty, and the temptations to dishonesty which poverty carries in its train. I would not trust men here without the strongest guarantees for their intelligence and integrity. And 1500 dollars would not purchase them a library sufficiently extensive to enable them to be prepared for the investigation and determination of the important and interesting questions which will come before them. With these views, I shall vote against the amendment proposed by the committee. If that amendment prevail, I shall look upon your judiciary as gone.

The ayes and noes being called for—

Mr. *Hicks* said: As his vote here would not explain itself, he would give his reasons. He voted for the amendment inserting "increased or." He did that with the view of raising the salary here over 1500 dollars; but as that failed, and it was made subject to the action of the legislature, he should vote against striking out 1500, believing, however, at the time, that it is not enough.

Mr. *Darnell* said: He had intended to vote for increasing the salaries of judges, and had been prepared to vote for 2000 dollars for the district judges, and 2500 for those of the supreme court. But as the matter was now left entirely between the legislature, the judges and the people, he should vote for rescinding 1500 dollars, leaving it with them to settle hereafter.

Mr. *Forbes* should vote to strike out the amendment of the committee, in order that the blank might be filled up with a larger sum. He could vote for 2000 and 2500. He would do that, with the hope that these salaries might be fixed and permanent; of all things, he abhorred seeing the legislature tamper in any manner with the judiciary; he believed they should be left as far apart as heaven and earth. You cannot make the judiciary independent, if you subject it in any manner to the action of the legislature.

Mr. *Brown* thought the amount of the salary ought to be fixed by the Constitution. He thought 2000 dollars small enough as compensation; and he did not think there should be any distinction between the judges of the district courts and those of the supreme court.

Mr. *Van Zandt* hoped the amendment would not be agreed to. It was unnecessary to enlarge upon the importance of drawing to the

bench the highest order of talent in the country. You cannot expect men of age, experience, and learning, to quit a lucrative practice, and engage in the arduous duties of a judicial station, unless you give them a competent support, and pay them something extra. Men who have devoted years of study and of toil to the law, who have snuffed the midnight lamp from their earliest youth, cannot be expected to go upon the bench for a bare support for themselves and their families. You must pay them something more than the amount absolutely necessary to pay them meat and bread, and supply them with the clothes they wear. You must expect to pay them something extra, and this cannot be done with a less amount than 2000 dollars. The Finance Committee, composed of gentlemen well versed in the finances of the country, believe that the amount necessary, at 2000 dollars, may be raised for this purpose. When we proceed to the district judges, he was for making a distinction; he believed 1750 was quite sufficient. In all professions, as in trades and occupations, there are various grades. Though satisfied that the district judges will perform as much physical and perhaps mental labor, still he thought it best to keep up the distinction of grades.

Mr. *Jones* said: That he rose, not for the purpose of discussing the subject, but merely to explain his reasons for the vote he was about to give. The section, as it now reads, provides that the legislature may, at its first, or a subsequent session, increase the salaries at pleasure. If it read 1000, and shou'd remain at that, in all probability, before the first quarter's pay was due, the salaries might be increased to 2000 or 2500 dollars. He had voted that they should not be increased or diminished, with the intention of voting for a higher salary, which salary should remain until the term of service should expire; to prevent the legislature from being influenced in this matter by those judges who would be here to tell them how hard it was to live upon their salaries. The feelings of members are liable to be wrought upon by interested individuals, telling them the extreme hardness of their case, and satisfying them that it is within their power to extend the remedy. He was disposed to give salaries sufficient for their support; he was not disposed to be churlish in this respect; but he hoped it would not be placed in the power of the legislature to alter them, for the term for which the judges may be elected. If the section should be made to read, that salaries could not be altered for the term of service, he would then vote for striking out, and for a large salary, perhaps the highest that might be proposed. But, as it now stood, he should vote against striking out, believing that if the motion should prevail, the legislature, at its first session, may be convinced that the amount is too small, and may extend the salary to 3 or 4000 dollars.

Mr. *Jones* called for a division, on striking out "$1500": carried.

Mr. *Mayfield* moved to fill the blank with "$2500."

The ayes and noes were called for, on filling the blank with $2500, which were as follow:

Ayes—Messrs. Darnell, Forbes, Kinney, Mayfield and Tarrant —5.

Noes—Messrs President Anderson, Armstrong of J., Armstrong of R, Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Clark, Cunningham, Davis, Evans, Everts, Gage, Hicks, Hogg, Horton, Howard, Hunter, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R, Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, M'Neill, Miller, Moore, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Van Zandt, White, Wright and Young—48.

So the motion was lost.

The question was then taken on Mr. Howard's motion, to fill the blank with "$2000," upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Gage, Henderson, Horton, Howard, Holland, Hunter, Jewett, Kinney, Love, Lusk, Lipscomb, Mayfield, M'Gowan, M'Neill, Miller, Moore, Power, Runnels, Smyth, Tarrant, Van Zandt, White, Wright and Young—38.

Noes—Messrs Brashear, Burroughs, Bagby, Evans, Hicks, Hogg, Irion, Jones, Latimer of L, Latimer of R. R., Lewis, Lumpkin, Parker, Rains, Scott and Standefer—16.

So the motion was carried, and the blank filled with $2000.

In the second blank of the 9th section, Mr. Van Zandt moved to strike out "$1500," (the amendment of the committee) as salary for District Judges, upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Armstrong of R. Brown, Caldwell, Cazneau, Clark, Cunninghan, Darnell, Evans, Forbes, Henderson, Howard, Holland, Jewett, Lusk, Mayfield, M'Gowan, M'Neill, Moore, Tarrant, Van Zandt and Young—22.

Noes—Messrs. Anderson, Armstrong of J. Bagby, Bache, Brashear, Burroughs, Davis, Everts, Gage, Hicks, Hogg, Hunter, Irion, Jones, Latimer of L, Latimer of R R, Lewis, Lumpkin, Miller, Parker, Power, Rains, Runnells, Scott, Smyth, Standefer, White and Wright —28.

So the motion was lost.

Mr. Lusk moved to reconsider the vote rejecting the amendment, prohibiting the salaries of the judges from being increased during their term of service; which motion was laid on the table.

Mr. Darnell moved to reconsider the vote, fixing the salary of the-

judges of the district courts at $1500; which motion, on motion of Mr. Gage, was laid on the table.

On motion of Mr. Rusk, the report of the Committee on the Judiciary Department was laid on the table for the present; and, on motion of Mr. Cazneau, the Convention proceeded to the special order of the the day for twelve o'clock, which was the election of public printer.

Messrs. Field and Cruger and Miner, being in nomination, the Convention proceeded to ballott: and Messrs. Miner and Cruger, having received a majority of all the votes, upon the first balloting, were declared duly elected public printers for the Convention.

On motion of Mr. Bache, the Convention adjourned until 4 o'clock P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Mr. Hemphill, chairman of the Committee on the Judiciary, to whom was referred the subject of "How far the title to lands, owned by the citizens of Texas, would be affected by an adjudication in the federal courts of the United States," made the following report:

Committee Room, July 29th, 1845.

To the Hon. THOMAS J. RUSK,

President of the Convention:

The Committee on the Judiciary, who were instructed to take into consideration, how far the title to lands, owned by the citizens of Texas, would be affectnd by an adjudication of their rights in the Federal Courts of the United States, beg leave respectfully to submit the following:

REPORT.

By the terms of the resolution, the committee are restricted to an inquiry into the effect on the titles to real property, by an adjudication of the rights of claimants, in the Federal Courts of the United States.

Without reference, therefore, to the other legitimate objects for the exercise of the judicial power of the United States, let us proceed to examine the jurisdiction of the courts of the Union, in the decision of controversies involving the titles to real property, within the limits of the future State of Texas. Among other classes of cases, the federal judiciary is authorized by the Constitution to take cognizance of all those arising between the citizens of different states, and between citizens and aliens, or foreigners.

By the judiciary act, approved September 24th, 1789, the circuit courts of the United States are empowered to take original cognizance,

concurrent with the courts of the several States, of all suits of a civil nature at common law, or in equity, where the matter in dispute exceeds five hundred dollars, and the United States are plaintiffs or petitioners, and an alien is a party; or the suit is between a citizen of the State where the suit is brought, and the citizen of another State.

As suits between aliens and citizens of other States, and the citizens of Texas, will involve all the controversies in relation to lands, which can arise on the rights of parties as now, by law established, and which are within the reach of the federal jurisdiction, we will not enquire into the rules which would control the action of the courts of the United States, on cases which may hereafter arise between the citizens of the State of Texas, should acts of subsequent state legislation infringe on the obligation of contracts, or violate rights secured by the provisions of the Constitution of the United States: such cases can only originate, in future legislation.

Were there any conflicting grants of lands from different States to be found within our limits, they would furnish occasion for the interposition of the federal judiciary to settle, between our own citizens, whatever controversies might arise from this source. It is believed that no such cases exist; and they, therefore, require no special notice.

In referring to the cognizance of the rights of aliens to lands, by the federal courts, the committee intend to embrace only the cases of aliens holding lands, by titles emanating directly from the government, or where aliens are, by law allowed a reasonable time to take possession and dispose of lands accruing to them by inheritance.

Whether aliens, who have purchased lands from individuals in this Republic can, in our own courts, maintain or defend suits for the adjudication of their claims; whether their titles are good against individuals, and can only be divested by a judicial proceeding, in the nature of an inquest of office; whether the defects in an alien's title are cured by naturalization; or whether his citizenship is prospective in its operation, upon his rights to real property, are questions which we propose not to discuss. They are not properly within the scope of the inquiry to which the attention of the committee has been directed.

Some of the most important of these questions are already before the judicial tribunals of the country for decision. They involve immense interests; and any opinions offered by the committee would not only be inexpedient, but could have no influence on the action of any court before which such disputes are pending, or may be brought for judicial determination: we will only say, that some of the most enlightened tribunals have decided that the rights of citizenship are altogether prospective; and that an alien's title to lands, purchased before his naturalization, acquire no increased validity, nor are their defects remedied by his subsequent citizenship.

But the principal source of power to the judiciary of the Union, to determine on rights to real property, springs from controversies between

the citizens of one State and those of another State—a correct understanding of what parties in this class of cases, are necessary to vest jurisdiction in the federal courts; and of the rules, principles, and laws, by which their decisions will be governed, will, the committee trusts, be sufficient to answer all the purposes of the inquiry directed, by your honorable body.

The citizenship necessary to give cognizance to the federal courts, consists of a residence or domicil in a particular state, by a citizen of the United States. It may be changed by a removal, in good faith, and with an intent to fix a residence permanently in another State.

Should the removal be for a temporary purpose, with intention of returning after its accomplishment, the person is still considered a resident of the State whence he departed.

The title in the plaintiff who is a citizen of a different State, must be obtained in good faith; for if the conveyance which has been made by a citizen of the State where the suit is brought, be merely colorable and collusive, it will not give the court jurisdiction.

Executors, administrators, and trustees, who are citizens of different States, may maintain suits in the federal courts, though their testators, intestates, or *cestui que* trusts, were, or may be, citizens of the same State with the defendants.

When jurisdiction has once vested, a change of domicil during the pendency of the suit, does not divest the jurisdiction. [See Morgan's heirs v. Morgan et al, 2, Wheaton's Rep., 290, and vol. 4th, cond, Rep. 121, and cases referred to.] But the more important object of our inquiry, is to ascertain by what laws and rules the decisions of the federal judiciary will be controlled.

In the 34 h section of the "Act to establish the Judicial Courts of the United States," before referred to, it is provided, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the U. States, in cases where they apply."

This provision is but a legislative recognition of the principles of universal jurisprudence, as to the operation of the *Lex. Loci*, in the trial and decision of causes. The true principles of the local law must govern, and not those derived from the jurisprudence of other States or foreign countries. This rule is particularly applicable to disputes involving real property. The judicial tribunals of all countries (more especially where the common law prevails,) recognize, to its fullest extent, the principle—that real estate is subject to the laws of the government within whose territory it is situate.

Should then a controversy arise between a citizen of this country and a citizen of another State, who, subsequent to our incorporation into the American Union, might acquire a claim to lands within this State, either by inheritance, devise, or purchase, and should suit be prosecuted for the

same, in the federal courts, the rights of the parties would be decided by the same laws and rules by which they would be determined in the courts of the State.

Whether the laws, customs and usages of Spain, the decrees of Mexico, or those of Coahuila and Texas, or the laws of the Republic of Texas, or all together, affected the rights in controversy—to each and all of these laws, would the courts of the Union give their just force and effect: and by no other laws nor principles deduced from other systems of jurisprudence, would the question at its issue be determined.

Neither the Constitution, treaties, nor laws of the United States can change, alter, or modify, the rights of individuals to real property, as established by the existing laws of the Republic. Both the federal and the state courts will be restricted in their decisions on those rights, to the provisions of the laws under which those rights originated, or by which they have been affected. And should rights have arisen under that portion of our Constitution and laws which, as being repugnant to the Constitution and laws of the United States, will become null and void; yet the rights thus created, will remain undisturbed.

The government of the United States is one of limited authority. All powers not expressly granted, are retained to the States, or to the people. All laws enacted by the States, not inconsistent with the Constitution of the United States, are valid and obligatory, not only upon the citizens of the State, but upon others who may claim rights or redress for injuries under those laws. The establishment of the federal courts, and the jurisdiction granted them in specified cases, could not, consistently with the spirit and provisions of the Constitution, impair the obligation imposed by the laws of the State, by setting up in those courts, a rule of decision at variance with that binding on the citizens. In accordance, then, with these well established constitutional principles, the laws now affecting contracts, regulating the disposition and transmission of property, &c., will not only be valid, but all made subsequent to our admission into the Union, not conflicting with the Constitution of the United States, will be equally obligatory. By the rules there prescribed, will our civil conduct be tested, and our rights determined, before whatever tribunals they may be adjudicated? But the courts of the Union will not only decide questions depending on local laws in conformity with those laws, but in such cases, (and more especially where titles to lands are involved,) the construction put by the state courts, on those laws, where that is settled and ascertained, will be adopted by the courts of the United States. And whether the decision of the courts of the State be grounded upon the construction of the statutes of the State, or form a part of the unwritten law of the State, which has become a rule of property, they will be regarded, by the federal courts, as of equal obligation. In the case of Polk's lessee v. Wendell, 5 Wheaton's Rep. 293, the Supreme Court held the following language: "The sole object for which jurisdiction of the cases between citizens of different States is vested in the courts of

the United States, is to secure to all the administration of justice, upon the same principles under which it is administered between the citizens of the same State—hence the court has never hesitated to conform to the settled doctrines of the States, on landed property, where they are fixed, and can be satisfactorily ascertained; nor would it be ever led to deviate from them, in any case that bore the resemblance of impartial justice." [Vide Brown *v.* Van Braam, 3, Dallas' Rep. 344, and 1 Cond. Rep. 157, and cases cited] Nor need apprehensions be entertained, that the federal courts will disregard the provisions of the statute of limitations. This class of laws has always been regarded with favor, by the federal courts. None have been considered as more universally sanctioned by the practice of nations, and the consent of mankind, than those which give peace and confidence to the actual tiller of the soil. All the reasonable purposes of justice are regarded as subserved, if the courts of a State have been left open to suits, for such a time as may arise a presumption in the occupier of the soil, that the fruits of his labor are effectually secured to him, beyond the chances of litigation. That prescription is a thing of policy, growing out of the experience of its necessity; and the time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every nation, in virtue of that sovereignty from which its legislation, for all persons and property within its jurisdiction, derives its authority. Where a question arose on the validity of the statute of a State, prescribing a shorter period for bringing suit on the judgment of a foreign tribunal, than on one obtained in the court of the State, it was held that such a provision was not repugnant to the Constitution of the United States; that there was no clause in that instrument, from which it could be plausibly inferred that the States might not legislate upon the remedy, in suits upon the judgment of other States. [Bell *v.* Morrison 1 Peters 360; Mellany *v.* Silliman 3 Peters 276; McElmoyle *v.* Cohen 13, Peters 312]

All controversies which may arise between citizens of this state, and aliens authorized to sue, will be determined by the same rules and laws which will guide the courts in the decision of causes between the citizens of different states.

Your committee have confined themselves to deductions drawn entirely from the Constitution, laws and judicial decisions of the United States. These afford the most solid grounds of assurance, that the rights of individuals to property, will be guarded with the most jealous vigilance, by the courts of the United States; and determined on the same principles of law which constitute the rules of decision in the tribunals of the state. The establishment of the federal courts within the limits of the state, and their cognizance of disputed claims to lands, will not injuriously affect the titles of citizens of this Republic. It will simply furnish a citizen of another state, or an alien, a selection between two *forums*, for the adjudication of his rights, both of which courts will

be controlled by the laws of the state upon which those rights are founded, or by which they are controlled.

The beneficent operation of the judicial power of the Union, in this class of cases, is the best proof of the enlightened wisdom of the framers of the Constitution, in clothing the federal courts with this high jurisdiction. The right to select a tribunal altogether independent of any of the states, for the settlement of controversies between the citizens of different states, and between citizens and aliens, tends greatly to increase the harmony and confidence between the states themselves; and preserve peace, and public and private credit, in our intercourse with foreign nations. It prevents all irritations and jealousies which might otherwise spring up between the different states, if the controversies between their citizens were, of necessity, subjected to the arbitrament of the tribunals of either. In the exercise of this jurisdiction, justice has been impartially and wisely distributed, while the laws of the states, not inconsistent with the Constitution of the United States, have been observed, sustained, and enforced.

JOHN HEMPHILL, Chairman.

ABNER S. LIPSCOMB, JAMES LOVE, JAMES SCOTT,
ISAAC VAN ZANDT, R. E. B. BAYLOR, J. P. HENDERSON,
JOS. L. HOGG, A. C. HORTON, WM C. YOUNG,
JAMES ARMSTRONG, J. S. MAYFIELD, E. H. TARRANT,
L. D. EVANS, W. B. OCHILTREE.

Mr. Gage moved to have 500 copies printed; and on motion of Mr. Parker, 1000 copies were ordered to be printed.

The committee on judiciary made the following report which was adopted.

Committee Room, Austin,
July 29th, 1845.

The Committee on the Judiciary, to whom was referred a resolution, instructing them to enquire into the expediency of inserting in the Constitution, a clause providing for the appointment of an officer, in each judicial district, whose duty it shall be to enquire into, and cause to be adjudicated in all the district courts, all cases, in their respective districts, of land titles forfeited, lands escheated within the territory of Texas; also, to enquire into the expediency of setting aside the monies arising from the sale of such lands, for the purposes of education, have had the subject under consideration, and respectfully report:

That the insertion of such a provision in the Constitution, as the one referred to in the resolution, would be inexpedient. It has been heretofore, and will be hereafter, competent to the legislative power of the

Government, to adopt proper measures to secure, for the public benefit, all lands which have been forfeited, for any cause whatever.

And the committee pray to be discharged from the further consideration of the subject.

[Signed] JOHN HEMPHILL,
Chairman.

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

ORDERS OF THE DAY.

The first question in order, was the motion of Mr. Rusk, to re-consider the vote prohibiting the salary of judges being increased, during their term of service; which motion was carried, and the vote re-considered.

Mr. Henderson moved that the report of the judiciary committee be laid on the table for the present; which motion was lost.

The question was then taken, on adopting the amendment of the committee, which is as follows: In section 9 h, 4th line, after the word "be," insert the words "increased or," so as to read "be increased or diminished during their continuance in office," upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Burroughs, Clark, Cunningham, Darnell, Davis, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, M'Gowan, Moore, Parker, Power, Rains, Runnells, Scott, Smyth, Standefer, Van Zandt, White and Wright—38.

Noes—Messrs. Baylor, Bache, Brashear, Caldwell, Cazneau, Everts, Henderson, Howard, Hunter, Love, Mayfield, M'Neill, Miller, Tarrant, Ochiltree and Young—16.

So the amendment was adopted.

The question was then taken on the motion of Mr. Darnell, to re-consider the vote fixing the salary of district judges at $1500; upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Armstrong of R., Caldwell, Cazneau, Clark, Cunningham, Darnell, Forbes, Hemphill, Henderson, Horton, Howard, Holland, Irion, Jewett, Love, Lusk, Mayfield, McNeil, Miller, Moore, Power, Tarrant, Ochiltree, Van Zandt, Wright and Young—27.

Noes—Messrs. Anderson, Armstrong of J., Bagby, Bache, Brashear, Burroughs, Davis, Everts, Gage, Hicks, Hogg, Hunter, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Parker, Rains, Runnels, Scott, Smyth, Standefer and White—26.

So the vote was re considered.

Mr. Horton moved to strike out "$1500," and insert "$1700;" upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Cazneau, Clark, Cunningham, Darnell, Forbes, Hemphill, Henderson, Horton, Howard, Holland, Irion, Jewett, Love, Lusk, Lipscomb, Mayfield, M'Neil, Miller, Moore, Tarrant, Ochiltree, Van Zandt, Wright and Young—27.

Noes—Messrs. Anderson, Bigby, Bache, Brashear, Burroughs, Caldwell, Davis, Everts, Gage, Hicks, Hogg, Hunter, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, M'Gowan, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer and White—26.

So the amendment was adopted.

The additional section proposed by the committee, to come in between the 9th and 10th sections, is as follows:

"The Judges of the Supreme and District Courts shall be removed by the Governor, on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment: *provided*, however, that the cause, or causes, for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each House; and *provided*, further, that the cause, or causes, shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and, in all such cases, the vote shall be taken by yeas and nays, and entered on the journal of each House respectively," which was read.

Mr. *Jewett* said, he had proposed this amendment, in order to place some more efficient restraint on the judiciary, than the power of impeachment. The experience of our republic on this subject, has proved that this power has been but an ineffectual scarecrow. Cases may arise, where the negligence or incompetency of judges would not afford a sufficient ground for impeachment, but the public good might require their removal. Impeachments are seldom preferred, and are difficult to be sustained. The history of the judiciary both in Texas and the United States, shows that the possibility of impeachment is but an ineffectual check upon a corrupt or incompetent judge. It was said by Mr. Jefferson, that judges seldom die and never resign; and although it is not proposed to give our judiciary, a tenure of office during good behavior, the lessons of the past should prompt us to adopt a plan, that will make the judges more responsible to the people, for official malfeasance or neglect, than can be done by rendering them removable from office, only by the tardy and uncertain process of impeachment.

The additional section was adopted.

The amendment of the committee to the 10th section, last line, to

strike out the word "same," and insert the word "State," was adopted.

The amendment of the committee to add to the 10th section, the following, was adopted:

"And in the trial of all criminal cases, the jury trying the same, shall find and assess the amount of punishment to be inflicted, or fine imposed, except in capital cases, or where the punishment or fine imposed shall be specifically prescribed by law."

The amendment of the committee to the 11th section, 2d line, is as follows: Strike out "amounts to," and insert "exceeds."

Mr. Ochiltree offered the following as a substitute. In same section and line, read "exceed in amount five hundred dollars, exclusive of interest;" which was adopted by the Convention.

The following amendment of the committee, was proposed as a substitute to the 12th section, down to the word "and," in the 4th line: "The Legislature shall, by joint vote of both Houses, elect one Attorney General, who shall hold his office for the term of two years; and a District Attorney for each Judicial District, who shall hold their offices for two years; and in case of vacancy, the Governor shall fill such vacancy until the next session of the Legislature;" which amendment was rejected by the Convention.

The committee proposed the following additional section, to come in between the 11th and 12th sections:

"There shall be a Clerk of the District Court for each county, who shall be elected by the qualified voters for members of the Legislature: he shall hold his office for two years, subject to removal by information, or by presentment of a grand jury, and conviction of a petit jury. In case of vacancy, the District Court shall have the power to appoint a clerk, until a regular election can be had;" which was adopted.

The amendment of the committee to the 13th section was adopted, and is as follows: Add to the section—"The sheriff shall not be eligible more than four years in every six."

The following substitutes to a part of the 14th section, from the word "when," in the third line, to the word "case," in the 6th line, inclusive, was proposed by the committe, and adopted by the Convention—"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 equal 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 following is the amendment of the committee to the 15th section:

Strike out all after the word "estates," in 4th line, add "and the District Court shall have such jurisdiction over said tribunals, and over executors, administrators, guardians, and minors, as may be prescribed

On motion of Mr. Cunningham, the amendment of the committee, together with the 15th section of the report, was referred to the committee on the judiciary.

The following is an additional section proposed, by the committee, to section 16:

"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 contracts, before any inferior tribunal, when the amount in controversy shall exceed ——— dollars, either party, upon application, shall have the right of trial by jury.

"In all cases where justices of the peace, or other judicial officers 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 a trial by jury."

Which, on motion of Mr. Love, was referred to the judiciary committee.

On motion of Mr. Cazneau, the report and amendments were laid on the table, and the secretary ordered to make out a fair copy of said report, embodying the amendments.

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

Wednesday, July 30, 1845.
Half-past 8 o'clock, A. M.

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

On motion of Mr. Young the report of the judiciary committee, made on yesterday, was re-referred to the same committee.

On motion, the report of the committee on printing, of July 26th, requiring the bond of the public printer to be given to Thos. J Rusk, President of the Convention, and the resolution of said committee, requiring the Secretary of this body to superintend the printing and distribution of the Journals, &c., were taken up and adopted.

Mr. Hemphill offered the following resolution:

Resolved, That it is expedient to insert in the Constitution the following clause: "No provision of this Constitution shall be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from the enjoyment of any of the immunities and privileges to which he is entitled under the Constitution