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Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bache, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Evans, Forbes, Henderson, Jewett, Jones, Love, Lipscomb, Mayfield, M'Gowan, Miller, Parker, Power, Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree, White and Wright—29.

So the motion was lost.

The section was then adopted by the Convention.

Mr. Mayfield moved to lay the report on the table. Lost.

Mr. Ochiltree moved to insert in 6th section, 3d line, after "ten years," and no appropriation for private or individual purposes shall be made without the concurrence of two-thirds of both houses of the Legislature." Adopted.

In the same section, Mr. Mayfield moved to strike out "nor shall any appropriation be made for a longer term than two years."

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

Saturday, Aug. 2d, 1845.

Half past 8 o'clock, A. M.

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

The President of the Convention announced the following special committee on the communication of the Commissioner of the General Land Office:

Messrs. Davis, Henderson, Tarrant, Lipscomb, Baylor, Everts and Jewett.

Mr. Parker offered the following resolution:

Resolved, That this Convention will adjourn *sine die* on the day of instant, at 6 o'clock, P. M.

Which was laid on the table one day for consideration.

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

ORDERS OF THE DAY.

The amendment of Mr. Ochiltree to the report of the committee on General Provisions, being first in order, Mr. Cazneau moved that the Convention resolve itself into committee of the whole on said report.

Lost.

Mr. Mayfield moved to strike out, in the 6th section, 2d and 3d lines, "nor shall any appropriation of money be made for a longer term than two years;" which was lost.

Mr. Smyth offered the following as an amendment to the amendment of Mr. Ochiltree:

After the word "purposes," insert "or for purposes of internal improvement."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Burroughs, Clark, Cuney, Davis, Evans, Everts, Forbes, Henderson, Hogg, Howard, Hunter, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Tarrant, Ochiltree and Young—37.

Noes—Messrs. Armstrong of R., Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Darnell, Gage, Hemphill, Hicks, Horton, Holland, Jewett, Kinney, Mayfield, Standifer, Van Zandt, White and Wright—21.

So the amendment was adopted.

Mr. Forbes offered the following as an addition to the 6th section:

After the word "law," in the 5th line, "appropriations for the payment of the Judiciary shall be first made, and if there shall be any deficiency in the Treasury, such deficiency shall fall upon the other Departments of the Government, and in no case shall the Legislature have the power to issue treasury warrants, treasury notes, or paper of any description, intended to circulate as money."

Mr. Van Zandt moved to strike out that portion of the resolution relating to judges.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Brashear, Bache, Bagby, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Miller, Navarro, Parker, Power, Runnels, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, White and Wright—53.

Noes—Messrs. Anderson, Burroughs, Forbes, Howard and Young

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So the clause in relation to the judges was stricken out.

The question was then taken on the latter clause of the amendment,

providing that in no case shall the Legislature have the power to issue treasury warrants, &c.

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cunney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R., R., Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Rungels, Scott, Standifer, Tarrant, Van Zandt, Wright and Young—45.

Noes—Messrs. Burroughs, Cunningham, Henderson, Hicks, Hogg, Lumpkin, Mayfield, McGowan, McNeill, Parker, Smyth, Ochiltree and White,—13.

So the amendment was adopted.

Mr. Wright offered the following, to come in after the words "two years," in 6th section, "except for objects of education," which was adopted.

Mr. *Evans* proposed an amendment, providing that the Legislature shall never legislate upon any private bill, or pass relief laws, or resolutions eulogizing any abstract principle, party, or individual.

He said he made this motion after a great deal of deliberation. He had not taken much care in drafting it, and might have used too many or too few words. The idea, however, must strike every member upon this floor. If we look over the history of legislation, we shall find the larger half of all the statute books composed of relief laws, and resolutions or laws passed for the purpose of eulogizing individuals and parties. The Legislature have spent the people's money for the purpose of benefiting private individuals; they have not classified all cases which should be provided for, they have not generalized them. He did believe that the case of every individual who has a demand upon the public treasury might be provided for by some general law, of which all might avail themselves. It is one of the most frightful sources of corruption that disfigures all legislative bodies. It violates one of the dearest principles established in the Bill of Rights, that the legislative and judiciary departments should be kept separate and distinct. Legislating upon private bills in individual and special cases, is nothing more nor less than the Legislature erecting themselves into a judiciary department; they make the law and adjudicate the case, from *ex parte* evidence too. How many frauds are thus perpetrated every day upon the government of the United States? This system has a very demoralizing effect upon the community.

At the suggestion of the President, Mr. *Evans* withdrew his amend-

ment for the present. The question being on the adoption of the 6th section as amended.

Mr. Hogg said: I have, Mr. President, a good deal of dislike to attempting to exhibit my sentiments here, when I know them to be so very unpopular, but however disagreeable the task may be, I feel it a duty which I owe to myself and a portion of the constituents whom I have the honor to represent upon this floor, to make some effort to oppose the total inhibition of banking privileges within the State of Texas. Believing the provisions of this section to have some bearing upon the subject, I will offer an amendment which will test the question now, and give me an opportunity of expressing my views with regard to it.

[He offered an amendment, in substance, providing that nothing herein should be so construed, as to prevent the establishment of a State Bank, when it should become necessary or expedient.]

I believe, sir, (he continued) that all freemen are entitled to the benefits to be derived from banking institutions, whenever the majority of the people shall deem it advantageous to the community. I am aware that banking is very unpopular at this time, with, perhaps, a majority of the people of Texas. But, sir, I wish it understood, that I am opposed to inserting any thing in this Constitution which will inhibit banking, at least so far as to preclude the establishment of one State Bank within the State of Texas. And I believe, although the people are now opposed to these institutions, that the time will arrive, when the people who come after us will be in favor at least of a State Bank. If this Convention is of opinion that the system is injurious to the welfare of society at present, or will be so in its operation upon posterity, I suppose it has the privilege of inhibiting it entirely. But I think this would be going too far. The privileges connected with the existence of these institutions may have been abused by the management of politicians in the United States; they may have been turned to injury. But I believe that banking privileges, as they have existed in the United States, have been a blessing for a long period. Banking and the credit system have advanced society there at least half a century. By the credit system and banking privileges our mother country has gone forward, made internal improvements, perfected steamboats, and constructed railroads. But for them, I believe it is probable that the Mississippi would now be navigated by pole boats, and not a steam ship would be seen flitting across the Atlantic ocean in fourteen days, in place of the tedious three months' passage of former days. Although the democratic party in the United States have succeeded in destroying the United States Bank, and have made all banking unpopular for the present time, yet I am unwilling to exclude my children and those who may come after me, from the exercise of those privileges enjoyed by my fathers. If they have been abused and converted to injury instead of be-

nefit, it does not therefore follow, that they are injurious in their tendency. Any gift or institution designed to minister to the comfort and well-being of mankind, may be so abused as to become a curse. I am well satisfied that if we inhibit banking and the credit system, for they go hand in hand, and cannot be separated, if we establish an up and down cash business, and a currency of gold and silver, the poor will remain poor, and the rich will remain rich, from generation to generation. Sir, I repeat it, if you establish this cash up and cash down system, the poor man's son will forever be compelled to remain in an inferior rank in life; whereas, under the operation of the credit system, and its attendant benefit, banking, the enterprising young man would emerge from his original poverty and obscurity, and vie with the sons of the richest and most opulent. I believe, again, that it would be impolitic for this Convention to pursue this course, because it would have a tendency to create a prejudice against us on the part of a powerful party in the United States, which, it is well known, has made the support of these institutions a prominent policy. Now, sir, though the whig party seems to have been put down, and the democratic party has prevailed in the American Union, a part of whose present creed it is to denounce banking, shall we, therefore, take it for granted, that it will never be advantageous to the people of Texas; that we are to be forever confined in our commercial operations to a metallic currency, a currency which I venture to assert is becoming the most spurious and corrupted ever known?

I do not appear here as the advocate of banking at the present time. I am willing to see this metallic currency fully tested; I am willing to see the principles of the democratic party, in this respect, entirely carried out; let them go to the bottom of the wheel. I am satisfied that the whole commercial world has been wrecked and thousands of honorable and industrious men made vagrants thereby. But inasmuch as the suffering and ruin thus caused have reached their utmost limit, I am willing to let things go on so for a few years, until the people shall become dissatisfied, and look back with longing eyes to the privileges of which they have been deprived. And when our children, in days to come, shall be of opinion that banks will be a blessing to them, I for one am unwilling that they shall find themselves tied up, by our action, at this time. It is very difficult to change the constitution of a country, it will necessarily require the concurrence of two-thirds of the people. Then I am unwilling to establish a principle here, which will debar them from the exercise of these privileges. If we ourselves, or our fathers have abused them, it is no proof that our posterity will do so. I am unwilling to set myself up as an infallible judge of what will be practicable or desirable for future generations. In establishing an organic law, which ought only to embrace the fundamental principles of government, I am unwilling to go abroad and gather up all the impositions ever practised upon mankind, for the purpose of providing against them in the Constitution. This system may be now, in our opinion,

impracticable and injurious; but our children, it seems to me, should be entitled to free action thereon. In undertaking to control or curb them, in any thing not necessary to the perpetuity of the great principles of republicanism, I say we are going too far, and further than I am willing to do. And I wish to record my vote in opposition to any such interference with the rights and liberties of the people.

Mr. Hogg withdrew his amendment, to come up after section 28.

The question was then taken on the 6th section, as amended, and adopted by the Convention.

In section 7th, 1st line, on motion of Mr. Love, the words "for the state at large" were stricken out; also in 7th line, same section, the word "each" was stricken out and "such" inserted, and the last "such" in the same line, was stricken out.

Mr. Forbes moved to insert in 5th line, after the word "county," the word "officer," so as to read "county officer." Carried.

Mr. Lipscomb offered the following amendment as a proviso to the 7th section.

"Provided, however, that the provisions of this section shall only apply to such offices as may be filled by the qualified voters of the county or district."

Mr. Howard moved, as a substitute to Mr. Lipscomb's amendment, to strike out all of the section after the word "law" in 3d line.

Mr. Everts said: He should oppose any probation, as to county residence, believing that it would, in a great many instances, exclude individuals who may have moved from one county to another, but who have lived in Texas a great many years.

Mr. Evans said: He hoped the latter part of the section would not be stricken out. He had seen the greatest abuses prevail for the want of this salutary provision. Any county or district in any country in the world, and especially in a republic, has sufficient integrity and talent to fill all the offices needed in the county or district. Unless this is retained (with the large patronage we have given the governor) he may send a favorite to every county, to fill its offices.

On motion of Mr. Gage, the 7th section, together with all the amendments of the same, was referred to a special committee.

Messrs. Gage, Howard, Ochiltree, Mayfield and Everts were appointed said committee.

In section 8th, Mr. Caldwell moved to strike out all after the word "Constitution," and insert "shall be fixed by the Legislature;" which motion was lost.

The section was then adopted without amendment.

Mr. Cunningham moved to strike out the 9th section.

Mr. President *Rusk* hoped it would be stricken out. He saw no reason for inserting it here: there might be some peculiar necessity for it in the Constitution of the State of Louisiana.

Mr. *Van Zandt* said that this provision was not confined to the Constitution of Louisiana. He believed it would be found that the Constitution of Alabama went still further; and those of some other States had a similar clause.

Mr. *Brown* said: That he should vote for the section as it stood, and for this reason. Although in ordinary cases of absence, the fact of citizenship is to be determined by the intention to return, or not to return, yet this provides for a different case. The Constitution of the United States requires the officers of the general government to be residents at the seat of government. It would not do to affect that fact with the intention to return or not to return. He thought all controversy on this point should be silenced; and as he believed the only way to do so was to frame a rule for those cases for which there is no recognized rule now.

Mr. *Cunningham* thought its effect would be rather to create doubts. It is only contained in one or two of the State Constitutions. Since the formation of the United States government, persons from all the States, holding office under the United States, have been in the habit of residing four or eight years in Washington city, and thence returning to their own homes, without losing their residence. This is the established construction in all the other States, without a constitutional provision.

The motion was lost, and the section adopted.

In section 10, Mr. Mayfield offered the following amendment:

After the word "officers," insert "who may wilfully neglect the performance of any duty assigned by law;" which was adopted: and the section, as amended, was adopted.

On motion of Mr. P. Rusk, the 11th section was stricken out.

In the 12th section, Mr. Forbes offered the following amendment:

In 3d line strike out "as member of the Legislature," and insert "to," so as to read, "eligible to hold or exercise any office of profit or trust under this state;" which amendment was rejected, and the section adopted without amendment.

Mr. Hicks moved to strike out the 13th section. He said it seemed to him that the object had already been provided for by the laws, and had been for the last three hundred years.

In 2d line of said section, Mr. Evans moved to strike out the words "for public officers," which motion was lost.

Mr. Cunningham offered the following amendment:

Strike out in 1st line, after the word "who," the words "are now or," and insert, in the 2d line, after the word "become," the words "after the passage of such law," which was rejected.

On motion of Mr. Forbes, the words "are now or," in 1st and 2d lines, were stricken out; and, on motion of Mr. Rusk, the 13th section, as amended, was stricken out.

Mr. Horton moved to add to the 14th section, the following: "and for the erection of a penitentiary at as early a day as practicable." He thought it would be of great use. It will improve those who have trades; and those who have not, will learn them very easily. It will thus prove a benefit to society, or at least to some neighborhoods.

The amendment was adopted.

Mr. Young moved to strike out the words "civil and." Lost.

Mr. Henderson moved to strike out the section.

Mr. Burroughs said: That he was in favor of striking out the section as amended, not because he was opposed to the objects intended to be arrived at; but because he thought the Convention, in inserting provisions of this kind, was exercising privileges which it ought not to exercise. He thought that the Legislature had full power to act upon all subjects not mentioned or provided for in the Constitution.

Mr. Horton said: By striking out the 14th section, it was true, you would leave this matter entirely to the Legislature. But he hoped the section would be retained as it was, for the purpose of securing the establishment of a penitentiary in the republic of Texas.

Mr. Lusk said: That the people in his county were desirous to have it inserted in the Constitution, that the Legislature shall provide by law for a change of venue in all cases, and for the erection of a penitentiary.

Mr. Caldwell said: When we say that the Legislature *shall* do so, we are putting ourselves in the place of the people, directing their representatives what they shall do. Their responsibility will be to the people; and not to us. I would leave it to them to say whether they would have a penitentiary. Whenever the time shall come when it is necessary to make such a provision, the Legislature will do it, without any direction from us.

Mr. Hogg said: I am in favor of inserting something in this instrument, declaring that the Legislature *shall* provide for the erection of a

penitentiary as soon as possible. I believe it is practicable; and I believe that the people of the country are favorable to it, that they wish this species of punishment to be adopted. I want to see it provided for somewhere in the Constitution.

The ayes and noes were called upon the motion to strike out, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of J., Bache, Burroughs, Caldwell, Clark, Cunningham, Henderson, Kinney, Latimer of L., Latimer of R. R., Mayfield, Miller, Navarro, Runnels, Smyth, Tarrant and White—18.

Noes—Messrs. President, Armstrong of R., Bagby, Baylor, Brashear, Brown, Cazneau, Darnell, Davis, Evans, Everts, Forbes, Gage, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, M'Neill, Parker, Power, Rains, Scott, Standifer, Ochiltree, Van Zandt and Young—36.

So the motion was lost.

Mr. Darnell said: He should propose an amendment, making it the duty of the Legislature to pass a law for this purpose, to say that they *may* do it. To say that the Legislature *may* have the right to do so, cannot be an infringement of any right. If we say they *shall* do it, they are bound to pass such a law; and very possibly the people might be opposed to it. But he wished this Convention to fix the rights of the people of Texas so far as the change of venue was concerned; it should not be left in the power of the Legislature to deprive the people of that right.

Mr. Darnell moved to strike out the word "shall," and insert the word "may," so as to read "the Legislature may erect a penitentiary, &c." Motion lost.

Mr. Mayfield moved to insert, after the word "penitentiary," the words "and a public school in each county, for the education of the poor."

Mr. Van Zandt said: That he should be in favor of the amendment in a proper place, but he did not think the *poor* and the *penitentiary* should go together.

Mr. Young said: That he was in favor of establishing schools for the education of the poor, whenever we get able to do it; but this amendment was out of place here.

On motion of Mr. Forbes, the Convention adjourned until half past 8 o'clock, Monday morning.