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Citation: *Debates of the Texas Convention. Wm. F. Weeks, Reporter. Houston: Published by J.W. Cruger, 1846.*

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Monday, August 4, 1845.

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

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

Mr. Gage, in behalf of a special committee, made the following report :

Committee Room, August 4, 1845.

To the Hon. T. J. Rusk,

President of the Convention :

Your select committee, to whom was referred the 7th section of the General Provisions of the Constitution, have had the same under consideration, and have instructed me to report the following amendments, and recommend their adoption :

In the first line, strike out the words "at large," and strike out the entire section after the word "law," in the 3d line.

[Signed.] D. GAGE, Chairman.

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

Mr. Hemphill offered the following resolution :

Resolved, That the Commissioner of the General Land Office be requested to report to this Convention the amount of land embraced in the certificates for head rights, issued by the various boards of land commissioners of this Republic, the amount of land necessary to satisfy certificates reported as genuine and legal; also the amount of land called for by certificates not recommended as genuine; the amount of land necessary to satisfy scrip, military warrants, and other inchoate titles issued by the government of the Republic, and the quantity of the public domain, which will remain after the claims already issued are surveyed.

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 was adopted.

Mr. Evans offered the following resolution :

Resolved, That a committee of five be appointed, whose duty it shall be to enquire into and report to the Convention the condition of the land system in Texas, the amount of unappropriated domain, the amount of appropriated domain, the various kinds of land titles, the various kinds of land claims, located and unlocated, the probable amount of forfeited lands, the probable amount of claims owned by foreigners.

Which, on motion of Mr. Van Zandt, was laid on the table for the present.

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

ORDERS OF THE DAY.

Mr. Ochiltree moved that the Convention resolve itself into a committee of the whole; which was lost.

Mr. Mayfield's amendment to the 14th section, providing for the establishment of public schools in each county, was taken up and rejected.

Mr. Latimer of Red River moved to strike out the 14th section.

Mr. Lipscomb said he thought there could be no injury from permitting it to remain. And it would prevent a very vexed question from coming up before our courts. He, for one, believed that the act of the legislature, providing for the change of venue, was unconstitutional. He was satisfied that by the common law there could be no change of venue in criminal cases. He was disposed to put it beyond controversy.

The motion was decided to be out of order.

The question being on the adoption of the section.

Mr. Young said that he should vote against it. He was not opposed to change of venue in criminal cases, but he was in civil cases. He believed it had worked much injury. The parties are not situated as in criminal cases; they have an appeal from the decision of the district court to the supreme court, which will correct any error fallen into on the trial below. But in criminal cases, there has been no appeal heretofore.

The ayes and noes being called on the adoption of the section, stood as follows:

Ayes—Messrs. President, Armstrong of R., Baylor Bagby, Brashear, Brown, Cazneau, Cuney, Davis, Evans, Everts, Forbes Gage, Hogg, Horton, Howard Holland, Hunter, Irion, Jones, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree and Van Zandt—42.

Noes—Messrs. Anderson, Armstrong of J., Burroughs, Caldwell, Clark, Cunningham, Hemphill, Henderson, Hicks, Jewett, Latimer of L., Latimer of R. R., White, and Young—14.

So the section was adopted.

Mr. Cunningham moved to strike out the 15th section [relating to arbitration.]

Mr. Van Zandt said: I believe that if the section is retained, a great deal of expensive litigation will be saved the country, under the present arrangement all the matters of litigation are compelled to be tried by the courts. I doubt very much whether the judiciary have the power to transfer a case to individuals for arbitration, and to enforce their decision. It seems to me that this provision will do away with all doubts upon the subject, and enable the parties to refer their cases many times when they might desire it, to arbitrators, and enable the court to enforce their decisions.

Mr. Henderson said: I am opposed to the section as it stands, and opposed to it, let it take what shape it may. If it is intended to give the legislature the power to force parties to arbitrate, it conflicts with that part of the Constitution which secures the trial by jury. If not, it is useless, for no one, I presume, will question the power of the courts to authorize a reference to arbitrators, where the parties agree. In England, the courts have taken it upon themselves, when such reference is made in court, to enforce the decision.

Mr. Brown said: I shall vote for the adoption of the section. I have no doubt of the power of the legislature under our Constitution to pass laws providing that matters in dispute may be referred to arbitrators. At the same time, I believe that an act authorizing parties to refer their cases to arbitrators, will be more prolific of controversy to any thing that could be done; that at every step litigation will arise. But the people generally do not think so. If proposed here, where almost all are lawyers, and voted down, they will say "you have taken from us the right of arbitration." It is a very simple word to the common mind, but productive of very costly consequences when tried. I know nothing about the arbitration at the civil law: but I do know, that at common law, it opens the door to numerous controversies, and raises up hundreds of questions which could not arise where there is no law providing for arbitration. I shall vote for it, because I believe it is desired by the people: if submitted to them, I am satisfied they would vote for it.

Mr. Davis said: I do not believe that it will increase litigation. If arbitration is provided for, and it works beneficially, it will be resorted to; if badly, people will not be compelled to submit their cases to arbitration. Then I hope it will be retained, not only because the people desire it; but I think myself that it will prove beneficial.

Mr. Henderson said: Under a provision of this kind, the people may be forced to submit their controversies to a tribunal generally useful. Suppose the Legislature should say that the judge shall order all cases to be arbitrated which he may deem necessary. They are submitted to three, four, or five individuals, with no man to expound the principles which apply to them; and the result is, the judgment of two or three

men not learned in the law. The courts have already the right, by consent of parties, to make a rule of court submitting a case to arbitrators, and to make their decision a rule of the court.

Mr. Howard offered the following amendment: add to the section the following: "when the parties shall elect that method of trial."

Mr. *Cunningham* said: I believe the operation of that section will be such as supposed by the gentleman from Colorado; that it will be a fruitful source of litigation. I believe also, that the Legislature has the power to provide for arbitration in cases where the parties agree. And I believe, that whether the Legislature do so or not, the courts have all the authority necessary in such cases.

Mr. *Evans* said: I am opposed to the amendment offered by the gentleman from Bexar, and decidedly in favor of the section as it now stands. I had contemplated going further; as I know, however, that I should be opposed, I have made up my mind to be content with voting for the section as it stands. I shall not assail the motives of lawyers: but they are wedded to a certain system of settling disputes, by which they live, and draw into their pockets a large revenue; and perhaps they cannot view the question in its proper light. Now I do not want to excite any ridicule against myself, but I will state what I candidly believe, that the whole contrivance of courts of judicature is a fraud upon the community; the whole system is an invention of the darker ages of the world, and productive of the greatest injury. I take this position: that there is no question of right or wrong which a savage is not as competent to decide as the ablest judge in the land; no question which affects the rights of property, or the person, which the untutored savage cannot determine as well as a Story or a Marshall. And why? Because questions of right and wrong depend upon feeling, and not upon reason. A man that feels right, no matter how uncultivated his mind may be, is as good a judge of such matters as the most learned men that ever sat upon the bench. If this were not the case, there could be no human responsibility in this world or the world to come. I will take another position: that any man who teaches your country schools, and understands the common laws of syntax, is as well qualified to understand the constitutionality of the law, as a Daniel Webster. Why? Because any sentence in the English language, whether it be found in a law book or in a Bible, is to be construed according to the rules of grammar. I know that lawyers have a way of construing the former for themselves. I know that they have their particular phrases, and words with peculiar meanings, which the common people cannot understand. And here is the fraud of the whole system. Let a plain law be passed. Say the lawyers, no man can write a law plain enough for the common people to understand. It is referred to a court to get the

legal meaning of its terms; the court weighs the terms, as they call it, and settles their meaning. How long does it stay so? Until they can get two men to fall out about the decision, and then they get a court to decide the case already decided. The court then enforces the decision, or overrules it. There are now twelve hundred overruled cases in the common law. The world cannot contain the books of legal reports. The ablest men in England and the United States, have ascertained to a mathematical certainty, that the fees of lawyers and the costs exceed greatly in amount the value of the things in controversy. Take all the lawsuits now in progress in the United States or the State of Texas, value the property in dollars and cents, and you will find that the costs of litigation exceed the value of the things litigated. Ought we not, then, to adopt some other system? And there is no other but this of arbitration. You can settle all your differences by arbitrators without costs; for then the lawyers do not pocket large fees, and there are no officers who live upon litigants. I am friendly to the system, because I have seen it in actual operation. I have lived in countries where there were no law suits; where every difficulty was settled by the friendly interposition of neighbors. The peace-maker lived there; the lawyer did not. And no difficulty resulted from this system. The members of the Baptist church settle all their differences by arbitration: the Methodists all theirs; the Quakers all theirs, by arbitration. If this system prevail, you will find men in every neighborhood, able and christian men, who would be proud of the character of arbitrators and peace-makers among their fellow men:

Mr. Love said: If I understand the clause before the convention, it authorizes the Legislature to compel arbitration in any manner which they may choose. If I understand the amendment, it places the law as it is, and leaves to the Legislature the power to provide for arbitration where the parties consent to it. I do not wish to discuss the subject of arbitration, or the principles which the gentleman from Fannin has laid down. I do not understand him to condemn lawyers as a class; but as saying what perhaps is true, that they derive their existence and have their living immediately from vices of the community, and a spirit of litigation, which some of us will contend is right. As a matter of necessity, they are called into action by the vices and improper conduct of the world at large. We may presuppose a state of things where there would be no litigation. If I understand him, he would do away entirely with the necessity of lawyers; and we should then enjoy a millennium with regard to litigation. Now I am not able to say, whether we are prepared, in these degenerate days, to adopt the scripture rule. Nor do I believe, if the Legislature had the power to originate such a system, that we should have public virtue enough to adopt it, such, unfortunately, is our propensity for litigation. If they should undertake to compel us to do right against our consent, they would be resisted in every possible

manner. Under that view of the matter, we had better, probably, leave things as they are for the present. We are not ready yet to eradicate these evils which have existed at all times past, and will continue to exist for some time to come. It is true that the expense of litigation throughout the world is double the value of the whole amount of the things in controversy. I venture to say, that if you take the records of the courts, and add up the amounts of the judgments, you will find the costs, including lawyers' fees, clerks' fees, Sheriffs' fees and all, much greater than the amount of the sums for which judgment is rendered. It is indeed a sore evil; but I do not believe the time has yet arrived to eradicate it; nor do I think it will arrive until the millennium.

Mr. Hemphill said: It might be understood from this section, that very few laws have been passed by our Congress on the most important subjects. The doctrine of arbitration is very well understood in this country. I presume the President remembers the time well, when no suit could be commenced until after it had been submitted for arbitration to the *buenos hombres*. It was provided by the Mexican laws, that resort should first be had to *conciliation* as it was called. Every difference was to be first referred to two *buenos hombres*, [*conciliatores*], who had a right to choose a third. It was necessary to get a certificate from them that a controversy could not be decided by arbitration, before either of the parties could commence a suit. It was not the practice in fact before the revolution; because parties got a certificate as if they had complied with the law. Such was the spirit of the Anglo Saxon settlers, that they never could submit their differences to arbitration: but they got the certificate. A gentleman who was high in office in those days, informed me that not one case in five hundred was settled by arbitration. Ever since the introduction of the common law, it has never been supposed that the Legislature was prohibited or restrained from passing the laws necessary to decide differences by arbitration. At the last session, the Legislature passed a long law upon this subject. All laws not inconsistent with this Constitution, will continue in force until repealed. If the object of this provision is to prevent the Legislature from repealing the existing laws upon the subject, very well. But I should like to have it expressed in that way. A similar court to that of the *buenos hombres* has been lately established in Sweden. This has been thought remarkable, extraordinary, something indicative of a great progress. Though the system is known to all nations who have had the civil law, this statement was not only taken up and published in the United States as something extraordinary, but it was taken up by the editors of Texas, and absolutely published by them to the world as something uncommon. And this was our old law abolished some years before. These editors at that time made a mistake; and I think we are about to make a similar one. I would like to have a provision inserted, that the Legislature shall not have the power to take away the right of arbitration.

The amendment was adopted, and the section as amended adopted.

Mr. Forbes offered the following, to come in between the 15th and 16th sections, as an additional section:

"The Legislature shall pass no law altering or taking away the legal remedy for the collection of debts, which existed at the time of the contraction of the debt, provided such restriction shall be construed to extend only to laws regulating judgments, executions, mortgages, and deeds of trust."

Which was rejected.

Mr. Anderson offered the following, as an additional section, to come in between the 15th and 16th sections:

"Within five years after the adoption of this Constitution, the laws, civil and criminal, shall be revised, digested, arranged, and published, in such manner as the Legislature shall direct; and a like revision, digest and publication shall be made every ten years thereafter!"

Which was adopted by the Convention.

Section 16th was adopted.

Mr. Parker moved to strike out the 17th section, relating to granting divorces. He thought it unnecessary. He thought the Legislature the better judges whether it was necessary for them to grant divorces or not.

The Convention refused to strike out, and the section was adopted.

Mr. Brown offered the following additional section, to come in between the 17th and 18th sections:

The legal effects of all marriages now or heretofore subsisting, shall for the future be held and taken to be the same as though such marriages had been good and valid from the beginning, provided that nothing herein contained shall work any revocation of vested rights.

Mr. Ochiltree said: The tendency of that section would seem to be to legalize every marriage contracted in Texas, right or wrong. It might produce collision between different sets of heirs.

Mr. Jones said: It is a well known fact, that hundreds and thousands have been married in a political form, by bond. It may prevent a great deal of difficulty with regard to the rights of children now growing up.

Mr. Van Zandt said: I believe that two distinct laws have been passed for the ratification of marriages. One of them authorized those who had been married under the first form to come forward within a given time, and have the ceremony performed again. Since that time there has been a law passed, ratifying all such marriages, whether the ceremony has been performed over again or not.

Mr. *Hemphill* said: There are a good many marriages which are not covered by the laws referred to. He would move to refer the subject to a committee.

Mr. *Jones* said: Though not directly interested myself, I have felt a deep interest upon this subject. I am not a lawyer by profession; but the best lawyers have doubted the constitutionality of the laws referred to; they had a retroactive effect in many cases, some action upon the subject might result in a good deal of good to the generation now growing up.

Mr. *Davis* suggested a committee of three.

Mr. *Caldwell* said: I think the judiciary committee the proper one. The gentlemen composing that committee have had the various difficulties relating to marriages and heirs before them as judges heretofore. The law passed by Congress provides for marriages by bond; but perhaps some of the marriages solemnized by priests and otherwise, are not legal. For instance, the case of a man emigrating to this country, whose wife refused to come with him, and afterwards, perhaps, applied for a divorce, on the ground of abandonment, procured it in accordance with the laws of the State in which she sued, and became at liberty to marry again, while the same privilege was not extended to him. A construction might be adopted under our laws hereafter, by which his children in this country would not be entitled to any portion of his property. I think, where lawfully married by a priest, or other individual authorized to marry, or united by bonds, if he has two sets of children, that they ought to be put upon an equal footing. His property acquired here, under our laws, was given him, in all probability, in consideration of the marriage and family in this country; and by the laws which may hereafter prevail, these very children and his last wife may be cut off from inheriting the property intended for them.

Referred to the committee on the judiciary.

The 18th section, relating to the rights of married women, was then read.

Mr. *Hemphill* said: He disliked to be troublesome, but he was not altogether satisfied with this section. He was in favor of establishing the community as it now exists, or of preventing it from being altered; also of allowing separate property to continue separate, as now established. But, if it were the meaning of this section, that all property which both parties might have at the time of marriage should be community property between them, he should be opposed to it. The section was too short, general and vague, to accomplish the purposes perhaps intended, by the committee.

Mr. *Everts* moved to strike out the section. He said it might be true that the people of Texas were wedded to the community of property as it now stands; and it might be a popular theory. But, for himself, if he had any preference, he would like to see the common law principle, as modified in the States, introduced upon this subject, as one, to his mind, more clearly defining the rights of the widow and children, and more amply and justly securing them, than perhaps any other rule which could be introduced. He wished to leave to the Legislature, and those to come after us, some right to make laws to govern themselves, with regard to the distribution of property and the regulation of the course of descents. It did seem to him that this thing of tying up the hands of the Legislature, with regard to this and many other subjects, was going beyond what struck his mind as correct and proper. These subjects were generally well defined in the laws of England and the United States, and it seemed to him there is no country where the rights of women and children are better maintained, and more complete justice has been done than in those countries. For his own part, he was partial to that mode; but we had a law now in force in Texas, defining the rights of married women, introduced immediately after the adoption of the common law, which would still remain in force, and if the Legislature hereafter should see proper to alter or change that mode, let them do so; but leave it open to those who come after us, to do as they may think proper.

On motion of Mr. Van Zandt, the 18th section was referred to the committee on the judiciary.

The 19th section, relating to the separation of the families of slaves, was read.

Mr. *Barroughs* moved to strike it out, on the ground that the Legislature could do nothing to interfere with or prohibit the sale of slaves under execution, and that, if any thing could be done, it would operate unjustly towards creditors.

Mr. *Love* said: As he believed he offered this section before the committee, he would say a word or two in explanation. He had himself seen so much cold-blooded inhumanity and barbarity displayed, in separating infants from their mothers, that he thought there was a necessity for some provision upon the subject. In reply to the suggestion of the gentleman from Sabine, he would remark, that all those laws are prospective, and if a man contracts a debt, it is known by the creditor, that he cannot sell a negro woman separately from her children for the debt. He had not, however, proposed to go as far as the section reported by the committee; but only that a valuation should be had, and the mother and children sold together. He thought it cruel to separate a mother from her children under ten years of age; he thought it against policy.

and humanity and every thing else. He proposed merely to give the Legislature the power to make such arrangements, that persons hereafter separating mothers and children should be governed by some known rule of law.

Mr. Hogg said he was much pleased with the principles of humanity advocated by the gentleman from Galveston upon this subject. He would like to offer a section in lieu of this; but had three sections upon the subject of slaves, which he wished to introduce after the 34th section, immediately before the sections relating to imprachment. They were founded upon principles of humanity. Though not entirely covering this provision relating to families. He did not think he could vote for this section, although he would like to do so, as he thought it impracticable.

Mr. Jones said: He hoped the motion would not prevail. He should be pleased to see something of the kind among the provisions of the Constitution. He had discovered the necessity in his own immediate neighborhood for some action upon this subject. He had recently seen two sets of negroes sold, and for the purpose, probably of procuring a little more money by the sale, several little children, three years old and upwards, had been separated from their mothers, and wives taken from their husbands. This practice causes negroes to run away, and they are unusually punished. Some degree of humanity should certainly be extended to negroes in these cases; and he wished the Legislature to make some provision for that object.

Mr. Forbes said: He would like to see some humane provision upon this subject engrafted in the Constitution; but he thought the slaves were frequently benefited by being separated from their parents after arriving at a certain age, as was the case with free persons. If the age were specified, or some limitation inserted, he would vote for such a provision with a great deal of pleasure.

Mr. Ochiltree said: I hope, Mr. President, the motion will prevail. I have stated before, what perhaps no other gentleman upon this floor will say of himself, that I am a perfect fanatic upon the subject of slavery. Yet I may say, with truth, that although I was brought up on a plantation with slaves, although since I have been of an age to own slaves, I have never been without the possession of one or more. I have never struck a slave of mine a blow in my life. I correct them as seldom as any man living; and it has been a task to me to support them as long as I have. I know the motives which actuate the gentleman from Galveston; I well know his humane feelings. Not so, however, with another motive which I am induced to believe, operates upon the minds of some gentlemen friendly to the insertion of this section; it is

the desire of propitiating a power potent for mischief in the Congress of the United States. When some of us had the audacity to admit our fears upon the subject of abolition, we were laughed at. We were told that interest would always prevent any evils to us from that species of fanaticism. And now we hear this section spoken of out of doors, and universally supported as a lure to be held out to secure the votes of the northern people for the reception of our Constitution. Yes, although it seems it is their interest to do us no harm, yet we find every disposition manifested to propitiate their consent and kindness of feeling, to beg of them our entrance into the Union on the best and most favored terms consistent with their notions. I wish not the word *slaves* to be inserted in the Constitution. For my part, I wish neither to provoke nor to propitiate them. That is my feeling upon that subject. I am opposed to this provision on the ground of expediency. I do not believe it practicable to pass a general law which will secure the objects contemplated, without operating oftentimes injuriously to the best interests of owners. I will state an instance. Had I not acted from motives similar to those which actuated the gentleman from Galveston upon this occasion, I might now have been much better off. I have three slaves, two of them a father and mother, the property of my ancestor, which came to me endeared by all the recollections which will grow up between master and slave brought up together from childhood, and tended in infancy by the same black "mammy." They had a child, the solace of their old age, their Benjamin I may call him. He was reared in my family with my own little children. I early saw that the indiscreet partiality of his parents was encouraging him in a course which would ultimately result in his ruin; and frequently admonished the father that he was spoiling his boy. Several of my friends almost persuaded me to sell him, but my feelings revolted at the idea; I could not bear the idea of separating him from his parents. It was the worst act of my life that I did not sell him, and take him away from them at that time. That child has been recently concerned in the commission of a high crime, which has involved his father and mother, and perhaps their lives will pay the penalty. If he had been sold to some benevolent owner, and withdrawn from the deleterious influence of his father's partiality, he would, perhaps, have been taught the necessity of obedience in time to save him from ruin. His father and mother might have grieved for the moment, but time would have wrought its anointing influence, and the wound would have healed. This is one instance in which much evil might have been prevented by indulging the privilege of the owner, and parting the mother and child. I yielded to the same influence which operated upon the gentleman from Galveston, but it would have been far better had I done otherwise. I once read an admirable epilogue by Goldsmith, in which he describes a genius as descending to earth, and accompanying a traveller who was crossing a roaring flood with his boy. The genius snatched the boy and threw him into the raging

flood below. Call you this a work of good? asked the distracted father. Yes, replied the genius, for you had your feelings placed upon your child, instead of your God. And it is better for you both to be separated, for you cannot know what crime he might have been led to commit. Much might be said, I am aware, upon the humanity side of this question, but a great deal more upon the expediency side.

We have had upon our statute book already a law which exempted slave property from execution; and I am not free to say, had I been a member of the Congress which passed it, that I should have voted against it; but that law has done more injury in several counties in Texas, than any other. It was looked upon as a direct attempt, not to indulge a principle of humanity, not to preserve the link unbroken between master and slave, but rather as a contrivance to evade the rights of creditors. Give this authority, and if in the course of time a great pecuniary depression should occur, I am confident the Legislature would overleap the spirit of the provision, and under the shield and buckler of humanity, would pass a law to cover the grossest frauds on the rights of creditors. I do think we should trust every thing to the feelings of the master. No power ever yet compelled an owner to sell his negro slave, so far as my knowledge goes, but the stern hand of necessity. I never yet knew an instance of the kind, unless the master was operated on by necessity, either that of preserving other slaves from the contagion of crime, or the necessity of debt. But, says the gentleman from Galveston, this action is prospective. He who credits the slave owner, will do it with a full knowledge of this contingency. This is a good argument; but why not strike at once at the basis of the credit, and say that there shall be no collection of debts whatever; for if a man credits another, it is then with a knowledge of this contingency. But such a course would be found detrimental to the best interests of society. I trust this section will be stricken out; first, because it is exceedingly inexpedient, in my opinion; secondly, it ties up the hands of the owner from selling his slave for purposes of good; and thirdly, because it is a mask for the fraud and corruption of the future Legislature of the State.

Mr. Lora (with leave) said: That he had no other motive than that of humanity; to propitiate the abolitionists or any other class, was not a habit of his life; if he had any fault in political matters, it was that of being too independent. He could not see any evil to result from this provision; the state of things which has been conjured up could not by any possibility exist. He would leave it entirely to the wisdom of the Legislature to provide against the case described by the gentleman from Nacogdochea. He thought he was a bad master who would permit a father to corrupt the morals of his son, and was willing that the law should provide for taking slaves away from such a master, and giving them to a better.

It is our duty to be humane at the same time that it is our duty to be just. And he would not permit inhumanity towards a slave any more than towards a child; but would place them on the same footing.

He had offered this provision from a sense of duty, to correct what he considered to be a great evil. Whatever might be our feelings with regard to this matter, there was no man who would safely get up and say he would be willing to tolerate any species of inhumanity. A bad and cruel master is despised and shunned by every honorable man in the community where he lives. If we have the power thus to ameliorate the condition of the slave, the institution will be stripped of many of its horrors; we shall generally increase the moral tone in our slaves, until the time may arrive when necessity, interest, or something else, will free us entirely from that species of population. The period of this institution is governed by the law of population, and that time will come, no doubt; but until it does, let us endeavor to ameliorate their condition, and make them as comfortable and happy as possible.

Mr. Henderson said: He should vote for striking out this section, because the Legislature undoubtedly has the power to do all that we say here they may do. It is a well established principle of law in all the States, that an administrator or sheriff, when it becomes necessary, may in his discretion, sell them all together. It is generally exercised; the Legislature, however, may enforce it upon masters.

Mr. Van Zandt offered an amendment: strike out the words "families of," and insert "mothers and children under ten years of age." If that amendment were adopted, he said, he would vote for the section.

Mr. Howard said: If that amendment is adopted, I shall vote against the section. I would rather see it stricken out altogether, than remain thus emasculated. There are two sorts of people that go crazy upon this subject; the abolitionists of the north may take the hydrophobia and froth at the mouth on our hands; and on the other, some of the southern gentlemen, the moment the subject is mentioned also go mad. I shall not permit my vote to be governed by prejudice; I shall act independent of abolition, as becomes what I conceive the proper character of legislators framing the fundamental law of the land. What is the question? Is the separation of families an evil and inhuman? If it is, it is a proper object for legislation; if not, it should be left untouched; if it is, we should regulate it so as to reach the evil, and not putter over it to tickle the public feeling, right or wrong. I believe, again, that the owners of slaves in this country are of one opinion, that the ruthless sundering of family relations is an evil which ought to be discouraged. Because the abolitionist says a thing is good, or evil, I will not take the opposite ground; but will act as becomes an independent man. I shall go for this provision for several reasons: first, because it is intended to correct

that which all admit to be an evil, the cruel separation of parents and children, and of families; secondly, because I believe it will strengthen the institution of slavery. All the clap traps about abolition will not affect me. And I will remark further, that the motive alluded to by the gentleman from Nacogdoches, is not an improper one to influence any man upon this floor. If you believe that merely by correcting that which is an evil and a great evil, an objection, which is sound, so far as it goes, and urged as such by the civilized world, can be removed, I say, remove it; I say there is no statesman, no legislator, who would act upon a different principle, from mere prejudice, because an enemy may happen to attack that evil. Now, the whole question is here: is it an evil, unnecessary to the existence and even injurious to the institution of slavery; and is it in our power to correct it? If so, we are bound to correct it; and if we do correct this which the world regards as an evil, which slaveholders themselves regard as an evil, I say it will be an act worthy of this body, an act which will reflect honor and credit upon this Convention and upon the State of Texas itself; and believing that the Legislature will have wisdom enough to guard against any injurious tendency in the measures which they may adopt; with this view, I shall vote for the section.

The amendment was rejected.

Mr. Hogg said he should vote to strike out, for the purpose of having something inserted, at a proper time, which would fit the case.

Mr. Lewis said, that having been a member of the committee reporting this section, he felt it his duty to say that he did not agree with the gentleman who proposed it, nor with the committee by whom it was adopted. He should briefly state that he was in favor of striking out the section: first, because he thought it entirely competent in the Legislature to pass laws which the protection of that description of property might make necessary, to prevent cruel and inhuman treatment; in the next place, because the Legislature, as he thought, should not have the power to pass any law which would prevent the master from making such a disposition of his property as would be advantageous to himself. Again, because in the case where a high public officer is called upon to dispose of negro property, to satisfy the debts of the owner, there should be no law by which he would be prevented from securing the most advantageous terms for the creditor and owner of the property. He thought that the Legislature had the entire control, so far as they should have, over this species of property, of which all recognize the absolute ownership as vesting in the holder. If we confer any right upon the Legislature to qualify or interfere with the ownership, they may at once strip the owner of his property.

The ayes and noes were called upon striking out, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bigby, Blyler, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Guney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Rains, Runnels, Scott, Ochiltree, Van Zandt, White and Young—43.

Noes—Messrs. Davis, Evans, Howard, Hunter, Jones, Love, Navarro, Parker, Power, Smyth, Standifer and Tarrant—12.

So the section was stricken out.

Mr. Hogg offered three additional sections, to come in after the 18th section, as follows:

SLAVES.

The General Assembly shall have no power to pass laws for the emancipation of slaves, without consent of their owners, nor 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 to this State from bringing with them such persons, as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: Provided that such slave be the bona fide property of such emigrants: Provided also that laws shall be passed to inhibit the introduction into this state of slaves who have committed high crimes in other states and territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors; and preventing them from becoming a public charge. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity, to provide for their necessary food and clothing, and allow them to rest from labor on the Sabbath or Lord's day, known as Sunday: to abstain from all injuries to them extending to life or limb: and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from such owner, and sold for the benefit of such owner who will not comply with such law or laws. They shall pass laws to prevent slaves from being brought into this state as merchandise only.

Sec. 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the General Assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 3. 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 upon a free white person; and on the like proof, except in case of insurrection of such slave.

On motion of Mr. Evans, the above sections as offered by Mr. Hogg, were referred to the committee on General Provisions.

In the 20th section, Mr. Henderson moved to amend by striking out all after the word "they" in the 5th line, and insert the words "are at the time of the adoption of this Constitution by the Congress of the United States:" which was rejected.

Mr. Brown moved to strike out all after the word "Constitution" in the 5th line. Lost.

Mr. Jewett offered the following amendment:

In section 20th, 3d. line, insert after the word "divested" the word "forfeited."

Which was adopted.

Mr. Everts offered the following amendment:

"Nor any surveys, claims or titles to lands which have been rendered or declared null and void by the said Constitution and laws," to come in after the word "Texas" in the 4th line.

Mr. Caldwell objected to that amendment: if adopted, it might reach further than it was intended to, or than the gentleman had any idea of. He believed there were many who were justly, legally, and honestly entitled to land, who had not at present the scrip of a pen by which they could establish their claim. Some have certificates which have been rejected by the board of land commissioners, and the courts are now closed to them. Are we to place matters in such a position that these honest claimants can never obtain their rights? There are other individuals entitled to land who have never made application. If they have forfeited their rights by their negligence, still if the Legislature should see proper to extend to them the privilege of establishing their rights to the public domain, he did not wish to restrict them.

Mr. Armstrong thought the object was neither to take away rights, nor to give them, but to preserve them as they are now. The amendment says "by the Constitution": it does not prevent the action of the Legislature

Mr. President Rusk said: It does not circumscribe the authority of the Legislature. It is necessary to be remarkably careful, or some of these fraudulent claims might be revived by the Constitution.

Mr. Caldwell said he was aware that he was looked upon with some degree of suspicion, in the discussion of any matter here relating to lands. But he could say as to these certificates, that he did not hold one dollar's worth, nor had he any property which would come under the denomi-

nation of forfeited or escheated property. At the same time, he was disposed to do justice to every individual. Where vested rights should come under discussion, he should endeavor to do justice to all parties.

Mr. Kinney said: The more I hear this matter discussed, the more I am convinced that the Legislature ought to deal carefully, and with great caution upon the subject of vested rights. I believe that, by the adoption of the amendment offered by the gentleman from Robertson, a great many worthy citizens will forfeit their rights to their lands in consequence of inability to comply with the laws. Several instances of this kind have come under my own observation. In the year 1840, several persons were taken prisoners in the vicinity of the point at which I reside, and taken to Mexico. They were entitled to head rights, and I have heard it remarked since they returned, that some of them had forfeited their right to lands in consequence of their not being here to prove up their claims. That would be very unjust. Where a man has been placed in a situation unsought by himself, where he has not been able to comply with the laws of the country, when he has been in the service of his country, it would be a hard matter that his rights should be taken from him, or that he should forfeit them by being a prisoner in Mexico. There are many other instances. Many of those who have been residing in the western country, have never been in a condition to prove up their head rights. If I have resided there for years, and have never asked for my headright, nor got it, that does not prove that there is no justice in my claim. I hope the Convention will try to be careful not to take rights from those who have earned them by their services, their blood and their exposures, in consequence of putting some little clause in the Constitution we are about to adopt, which may divest them of these rights. Many of those who live there came at an early day, and have grants of land from the government of Mexico; some to the amount of eleven leagues. I have heard it said, since I have been at Austin, that eleven leagues is too much for any man to have. When they came to the country, land was comparatively valueless. I would ask those gentlemen, if they had come at the early day, and by their residence and services had made their lands valuable, whether it would be right that they should be taken from them? It has been remarked to me that Mexicans holding large tracts of land are not entitled to them, because they have become valuable, and the holders have not done any thing for the independence of the country. Ask them how they know that, and they say because they run off. They do not consider, that they were driven off. Many of them were born and brought up upon their lands, and their very residence and occupancy have made them valuable. And I have known some instances of families, the heads of which have been killed in the service of Texas, and their lands have been located, and their families left in destitution and want. Is it just because they have been destroyed in fighting the battles of Texas, that the rights

of their progeny should be thus taken away? Is it right that their children should be left in a destitute situation, because they are not left here to plead for their rights? I consider the argument upon this subject incorrect, and misplaced, and fear that a great deal of injustice may be done inadvertently. It seems to me that the section is better in its original state than any amendment can make it. I believe that these matters should be investigated by the judiciary of the country, that both sides should be taken into consideration, and that we should place no clause in this Constitution taking away privileges previously existing.

Mr. Lewis said: I apprehend that every gentleman here is acquainted with the difference in meaning before the words *forfeited* and *divested*. A right may be forfeited by the operation of the law; but it cannot be divested except by an investigation of the matter before a competent tribunal and a judgment thereupon. Now I am aware of the existence of many rights which have been forfeited, but have not been so declared by the decision of a judicial tribunal, which, I think, are founded in equity and justice, and should be revived again by the Legislature of the State. For instance, there are many persons in possession of head right claims, whose certificates have been rejected by the Travelling Board of Land Commissioners, and who, having neglected to apply to the proper judicial tribunal, are now without remedy, unless they can obtain it by the act of the Legislature. Congress, at their last session, refused to pass a bill introduced for the purpose of extending the law. If we now close the door to the resuscitation of these rights, we shall work great injustice to that class which the laws should protect and support, those who have not been able to apply to the judicial tribunals before the expiration of the laws by which they could have done so. Let us not divest these rights by too great an anxiety to get rid of fallacious land claims.

Mr. Howard said: As the section originally stood, I was willing to vote for it. Now, sir, I hold this to be an obvious principle, by which each member of this body is bound to be guided, that I am here to legislate generally for the community; for the purpose of making general laws, and not rules and regulations in favor of my own property. I am willing to go for any provision which will operate for the general good, any provision properly belonging to the fundamental law of the land; but I will not vote for any which is intended to secure or to annul any particular private claim in the community. We have no right to take such action; because, when we do so, we assume judicial powers; we adjudicate a man's rights without any notice, without allowing him to confront those who assail his rights with proof, without observing any of those rules which control and govern in the investigation of such rights. This body is not constituted for any such purpose; it has neither legislative nor judicial powers, properly speaking, and if it is intended to adjudicate the private rights of individuals, give them notice,

let them have their witnesses here; but do not slip in surrepticiously a principle which will operate partially and prejudicially to particular rights in the community. It strikes me as an enormity; as a gross fraud upon abstract rights, to attempt any such adjudication. We are bound to leave rights where we find them, to leave them to the judiciary. What right have you to say that a survey made at one time and in one form, shall prevail over a survey of another form and another time; and thereby preclude the rights of one man and give another a right which the judicial tribunals of the country might not give him? I deny the existence of the power, and if we had it, I say it would be doing great injustice to exercise it. For myself, I have no interest in Texas lands above a few acres in a town lot. But I must say that the amendment made here will cause me to vote against this section. In my opinion, it is pregnant with the grossest injustice. Have you a right to judge whether a man's property is forfeited or not, whether a particular class of land claims shall be maintained or rejected? If you do this, take my word for it, this Constitution will never pass the Senate of the United States. I am willing to vote for the original section; to go beyond it, would be transcending the powers of this body, establishing a principle wrong in itself, usurping judicial as well as legislative functions. I shall not only vote against it, but enter my protest, if it pass this body.

Mr. President *Rusk* said: We have heard a great deal upon the subject of adjudicating private rights, and I agree with every word which has fallen from the gentleman from Bexar, with regard to the Convention erecting itself into a judicial tribunal and determining such rights. But who has attempted anything of the kind? What is there here to authorize such a supposition, except the word "forfeited," which embraces matters of another description; and as I voted carelessly for it, I shall move a reconsideration. One of the main causes of the revolution was the granting of twelve hundred leagues of land by the Legislature of Coahuila and Texas, by means of duplicate and triplicate certificates, located all over the country. These rights have been declared null and void by our Constitution and laws; and does any gentleman desire to reinstate them, to open the doors again to fraud of this nature? This is a complicated matter. There was a great deal of circumlocution in obtaining these grants, and a good many in this country; and it requires a little circumlocution to head these enormous and stupendous frauds attempted to be fastened upon the country. The amendment adopting the word "forfeited," is a different matter, and can very well stand in a section by itself. I had some hand in drafting this section; and I know the important bearings it will have upon various interests in this country. I see not a single word which goes to divest any individual of any rights which he may have under the laws and Constitution of Texas; if it did so. I would be the last man to vote for it. I see nothing here which

wars at all against private rights. If gentlemen were familiar with the history of the country, they would see the necessity of circumlocution to prevent some of the greatest frauds ever practised; the Yazoo speculation in Georgia not excepted. Again: with great respect for the opinions of the gentleman from Bastrop, I am confident that this section will not do any thing to prevent the Legislature from taking the action to which he alludes. I have never entertained any suspicion of that gentleman in connection with the subject of these certificates: I have always had the highest opinion of him, with regard to his private actions, as well as his public acts as a member of Congress. If he will read the section carefully, he will see that every thing will remain precisely as before the adoption of the Constitution; in a situation where the Legislature could grant relief, or establish tribunals for the purpose. Under these circumstances, with the word "forfeited" stricken out, I look upon this article as placing down the hand of this Constitution as the Constitution has done before, upon a stupendous mass of fraud. I think, with the amendment of the gentleman from Fannin, it can do no injury.

Mr. Rusk then moved to reconsider the vote which adopted the amendment inserting the word "forfeited".

Mr. Van Zandt said he was not satisfied that there was no such danger as seemed to be apprehended, in the word "forfeited". With a view to reflection, he would move an adjournment until 4 o'clock. Lost.

Several other motions for adjournment were made and lost.

Mr. Cunningham said: I hope the vote will not be reconsidered. I conceive this to be a matter of very great importance. When the Constitution was formed in 1836, there were two or three subjects with regard to which the persons who composed the Convention of that time, thought they ought to exercise the judicial powers spoken of by the gentleman from Bexar. I believe they had the right to do so; and I believe this Convention has the right to exercise legislative or judicial powers. I believe that when a fraud has been committed by either department of the government, the only remedy is in the Convention. That this was the only remedy in the case of the Yazoo fraud, was acknowledged by the greatest jurists in the United States. When the Convention of '36 met, the members of that body thought there existed some legislative or executive fraud committed under the government of Coahuila and Texas, which needed their repairing hand. They therefore did exercise a judicial power with respect to that fraud, and they had a perfect right to do so. They went further: and declared that all persons who left the country for the purpose of avoiding a participation in the struggle, or avoid or assisted the enemy, should forfeit their right to lands. They did not declare that these should be null and void, but that they should forfeit them. In the case of the fraud known as the

John T. Mason fraud, they declared that the title should be null and void. If this clause in the Constitution is adopted without that word "forfeited", only those lands which have been adjudicated, will belong to the Republic of Texas: because no other lands are divested. The people in my county and many other counties are very much interested that those rights which have been forfeited under the Republic of Texas, shall remain forfeited; and that the State should have the right which the Republic once had. When we repeal that Constitution, we repeal the particular act which forfeits those lands.

Mr. Young said: I believe the word should not be stricken out. I look upon this as a very important matter. A great deal has been said in relation to the amendment, and the effect which will be produced by that amendment. The term "forfeited" there, as I apprehend, means nothing more nor less than that these claims or rights of action forfeited by the Constitution and laws of the Republic, should not be again revived. In the section of country where I reside, the people, or a particular portion of them, have a very considerable interest with respect to reinstating rights which have been forfeited under the Constitution and laws of the Republic. Many claims and rights to actions by no means of little importance have been forfeited under these laws and that Constitution. The only object of inserting this amendment is, that these claims which have been barred or killed off by the Constitution, shall remain dead.

On motion of Mr. Jewett, the Convention adjourned until half-past 3 o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment, and took up the amendment of Mr. Jewett to the 20th section, 3d line, upon the motion of Mr. Rusk to reconsider the vote adopting the word "forfeited".

On motion of Mr. Lipscomb, a call of the Convention was made, and on motion of Mr. Armstrong of J., the further call of the House was suspended.

The vote was then taken on the reconsideration, by ayes and noes, as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Baylor, Burroughs, Caldwell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Howard, Hunter, Irion, Jones, Kinney, Lewis, Lusk, Lipscomb, McGowan, Miller, Moore, Power, Runnels, Scott, Smyth, Standifer, Tarrant and Ochiltree—32.

Noes—Messrs. Armstrong of R., Clark, Cunningham, Hicks, Jewett, Latimer of L., Latimer of R. R., Lumpkin, McNeill, Parker, Van Zandt, White and Young—13.

So the vote adopting the word "forfeited" was reconsidered.

Mr. *Howard* moved to refer the 20th and 21st sections of the General Provisions, and also the 4th section of the schedule, to the committee on the judiciary, and addressed the Convention as follows, in support of the motion :

I see a disposition, Mr. President, to disfigure the section before the House by amendments. I am willing to go as far as I can, consistently with the principles of international law : as far as I can, without violating the Constitution of that Union into which we are seeking to incorporate ourselves. But I am unwilling to go any further, because it would be wrong in itself, and because I know it will contribute to the defeat of the measure of annexation. It is a plain principle of international law, too well recognized to be cavilled about, that when States change by revolution their form of government, the rights of private property remain unimpaired. This is laid down in all the writers upon international law. So far as I can go, I am willing to go ; and I esteem the judiciary committee the proper committee to report to the House the principles which we may rightfully adopt upon this subject. I do not think we can hurry over a position of this kind, or that we ought to rush precipitately over a principle which would be derogatory to any government, and must be injurious to the interest of the great question. I am willing to go to the extent of the section immediately before us : it is only declaratory of a principle of law. But when you go a step further, and say that one species of survey shall prevail over another, that one species of title shall be higher than another, you overstep your authority, violate a great fundamental principle of the law of society.

With regard to the 21st section, about that with lawyers there can be but one opinion ; that it is, as it stands, a clear violation of every principle of national law, and a palpable violation of the Constitution of the United States, and the present existing Constitution of Texas. Not only that, but it will have a directly contrary effect from that intended. So far from getting rid of the colonization contracts, if we adopt this section, we shall discharge the contractors from all the conditions which the contracts themselves place upon them. It will be no doubt recollected by every lawyer here, that if one of the parties to a contract prevents the other from performing his part of the obligation, the other party is discharged from all obligation, and cannot be called upon to fulfil it. The case of *Arredondo*, in the United States' Supreme Court covers the whole ground. This is but a common principle of law, a familiar principle, of which every lawyer need only to be reminded, at once admit, that if you prevent a party from discharging his part of a contract by any act of your own, in the contemplation of law he is not bound to comply any longer. What do the committee propose here ? They say, we will suspend these colony contracts, and will give the contractors the right to sue the government. What will be precisely the operation

of that? Not what the committee contemplate. The contractor comes in and says, you have by your actions suspended my contract: by declaring that it shall cease, you have prevented my getting settlers to go upon the land: you have therefore discharged me from it. And there is no court in christendom, acting impartially, that would not so decide. I am unwilling to take a position which would discharge all these contractors; I am unwilling, by attempting to do injustice, to deprive the government of the very advantages of these contracts, however unwisely they have been entered into.

I will suggest an amendment, which, in my opinion, goes to the extent to which we may go upon this subject; prohibiting the Legislature from extending the time of any contract heretofore entered into by the President; and requiring judicial proceedings to be instituted for the purpose of declaring these contracts void, if void at the time they were made, or not complied with since, guaranteeing the rights of the actual settlers.

The United States courts have decided that, no change of government changes the rights of property, that no change of form, no revolution, can by any possibility change the rights which individuals have acquired to property; that these rights are guaranteed upon a general principle of international law, of the law of every country. How, then, is it possible for us, in the face of all these decisions, to undertake here to say, that we will annul those contracts, without giving notice, and without any of those proceedings which the law requires before a contract can be cancelled. It is said that this Convention has judicial powers; grant it, for argument's sake, though, by the by, I deny it; we can only proceed by an arbitrary edict to annul a right without having the opposite party before us; and you know that a judgment of any tribunal of a judicial character, without notice to the party intended to be affected, is an absolute nullity; and hence, where actual notice cannot be had, publication is regarded as constructive notice.

The section assumes the ground, that although the contractors may have complied with the conditions of the contract, although there may have been no default upon the part of the contractors, yet we have the right to annul them. I deny the existence of any such right; and that denial is based upon a series of decisions of the supreme court of the United States, as well as upon the plain principles of international law, which every lawyer must be familiar with. What would be the practical operation of such an attempt? We know that these contractors are non-residents; we know that the courts of the United States are open to them. We know they could proceed by injunction to restrain the agents of the State from exercising any authority whatever, and could proceed by mandamus to prevent our own commissioners from issuing patents. It is one thing to do a foolish thing, and another to get out of it. These contracts may have been wise or foolish; that is not the ques-

tion before us; they are the acts of the government, until declared otherwise by the proper authority.

There is another principle, based upon decisions of the supreme court of the United States; that when a government has once granted lands, it has no longer a jurisdiction over that land, and it is not competent for any government to resume it. This section is not only decidedly contrary to the Constitution of the United States, as impairing the obligation of a contract, but it is contrary to the general principle of law, that when a State has once made a grant, it has parted with the power to resume it.

We need not expect that the Senate of the United States will admit us into the Union, when the very charter under which we claim admission, embraces a very clear and palpable violation of the principles of international law, and of that very Constitution under which we are seeking to shelter ourselves.

It is due to the importance of the subject that the reference should be had, that we may proceed understandingly in relation to the whole matter.

With regard to the other section, I have only a single remark. The Legislature by law can provide a method for determining what lands are forfeited. I am willing to leave that authority to the State Legislature, where it now belongs. What the policy of the country may hereafter become, we know not; whether or not it will be policy to resume all lands which have been forfeited. If it should be against the policy of the country to resume them, I see no wisdom in making it imperative upon the Legislature to resume them contrary to the public policy.

I know the peculiarity of the situation of those at whom this provision is intended to strike. The Constitution containing the clauses of forfeiture, was adopted in June; and several months afterwards the army of the enemy was in possession of a large portion of the Western country; it was impossible for this law to be promulgated there; and will you punish a man for disobeying a law which he could not know? One of the officers then in command is now upon this floor, and well knows that a large portion of the population of that country was ordered off. I wish to know if it is the intention of this Convention to tear that population from their houses and their firesides? If there is any idea of that sort entertained by any portion of this body, I think it had better be left to the Legislature, and as a matter of policy and common decency kept out of the Constitution till we get into the Union. But I do not believe that the sense of the country is in favor of anything of the kind. I do not conceive it expedient or proper to require the Legislature in all cases, without distinction, to hunt over the community, and deprive every man in that situation of his house and property. To what confusion would it not lead, to what a chance of oppression? What a club it would place in the hands of every little big man in every portion of the

country? It strikes me that we ought to be cautious what ground we tread over. Who is clamoring for it, the State of Texas, or private individuals, who, in advance of the exercise of this right by the State, have placed their locations upon this territory, and now, with wolfish appetite, are endeavoring to place a clause of this kind in the Constitution to gratify and glut their disposition for spoils?

It may be very important that the State should not exercise this right at this time. It is well known that Jay's treaty could not have been made, unless some guarantee had been given in favor of those who were termed at that time refugees; and would it be wise in us to place Texas in a position which might interfere in the negotiation of a treaty between the United States and Mexico? I think not. It may be the means of precipitating the United States into a war, or of continuing her in a war. It is impossible to find any treaty of modern times which does not embrace stipulations securing parties in this unfortunate condition. The right of forfeiture is an unjust right, it is one against which every writer upon international law has bore testimony, one which the British government repudiates, one against which the light of modern times has set its face. I am aware that the Supreme Court of the United States has taken a different view of the subject; that in the case of *Brown* against the United States, it was decided to be a strict right. But at the same time it is a right against which Chief Justice Marshall reasoned, while delivering his opinion, as in itself illiberal, and not a right which the sense of the world, and particularly the judicial world, was inclined to uphold and maintain. Such being the case, I conceive that there is no reason why, merely to gratify private speculation, we should make it absolutely imperative upon the the Legislature to pass a law which might be inconvenient to the State of Texas itself.

Mr. *Cunningham* said: I am somewhat surprised, Mr. President, at the arguments of the gentleman who has last addressed the Convention. He commences by saying that he would be perfectly willing to adopt the section, if the clause of forfeiture were left out. If he will examine, he will find, that the clause as it now exists in the Constitution, is nothing more nor less than an express declaration, made without testimony, without hearing any evidence, that the claims of John T. Mason and his colleagues, are fraudulent, and therefore void. But, sir, there is no judicial act contemplated here. It is intended only to open this matter to the action of the judicial authorities of the country. It declares those people who have been guilty of violating, a certain law, have forfeited their lands, and that upon proof of the fact before the judiciary of the country, they shall declare them forfeited, and the right will then vest in the State of Texas. Gentlemen are perhaps unaware that the right is not thus vested in any speculator, but in the government, and that those lands will be bound for the payment of the promissory notes and liabilities of the government. Now, there are more than a milliou of acres of

land which have been forfeited, and consequently should be sold for the benefit of the country, and the public debt paid with them. An act of this kind cannot give them to individuals, but must restore them to the Republic itself. The gentleman speaks of the hardness of the case, with respect to those who have forfeited their lands by taking up arms against us, or leaving the country to avoid participating in the war, and calls your attention to the order issued, I believe, by yourself, at Victoria, in the immediate expectation of another invasion. Now, sir, persons who have been driven from the country are not embraced in that provision; those who have not left the country for the purpose of avoiding the struggle, but have been driven off, in order that the frontier might be properly protected. There is another fact, of which the gentleman is probably not aware; that when the Mexicans invaded the country, a large proportion of the citizens of Goliad and Victoria joined the enemy, as I am informed, a large party was headed by a man now residing in Texas. It is for such as these that this provision is intended; and I can see no hardship in the case. I will say that the welfare of my country depends entirely upon it; it is necessary, in order that its lands may be settled. But if no steps are taken in this matter by the Convention, if it is to be left to the Legislature, I agree with the gentleman, that we had better discharge them at once from forfeiture. I disagree with him, however, with respect to the right of the Convention to forfeit private property. I believe that the delegates of the people in Convention assembled, have the right to take private property, without a trial, or without hearing; but whether or not it is expedient for them to do so, is another thing.

The very provision now entertained in our Constitution, was adopted by the Consultation in 1835. Since that time many of these persons have borne arms against the Republic of Texas; the Mexican army, in leaving the country, carried with it a large proportion of the settlers of Goliad and Victoria counties. This is not an *ex post facto* provision with regard to them; they knowingly and wilfully violated a law of this country, and abandoned her at a point of time when their services were needed. I believe there are millions of acres, worth millions of dollars, which, if these matters should be inquired into, might be thrown into the treasury of the State of Texas.

This is not a matter of private speculation with me. I have no location upon these lands; I believe they are not subject to location. I believe the law has provided that those lands should be set aside and mortgaged for the payment of our promissory notes. It is for the benefit of the Republic alone, and for that of my county, that it may be settled, and that the people may know of whom to purchase, that I have made these objections to striking out.

Mr. Armstrong of Jefferson said: I hope the reference will not be made, inasmuch as it is in the power of any member to cut off all debate

by moving the previous question. The sense of the House may be had without referring the subject; and by a reference, it may not come up in sufficient time to be acted upon by the House. I think the object of the committee to whom it was referred, was to protect these rights, and to preserve them in the very same situation in which the Convention now finds them. The next section, not yet arrived at, it is also moved to refer. I must briefly notice some remarks made by the gentleman from Bexar. He supposes that the laws of nations are now to be brought here to govern the deliberations of this body, that the laws of England, the United States and others must be regarded. I am opposed to divesting rights which have been vested in any individual in Texas, and agree in the main with that gentleman in the object for which he contends; but for different reasons. I understand him to say, in the case of Ochiltree *versus* Taylor, that the people in a state of revolution had a right to do all things which they might see proper. Mr. Howard explained: All political acts they may do; but taking private property from Tom, and giving it to Dick, is a different thing. Mr. Armstrong continued. I understood the right to extend to the rights of persons in the case alluded to. I understood him to state that a country in a state of political revolution can do any thing which the people of the country and the Convention ratified by the people may think proper to do. It is not necessary that this country should have any eye to what the U. States may wish us to do. What have the laws of the U. States, or treaties made with foreign powers to do with an organic law for the State of Texas? We have the right to frame our institutions in our own way, so that we do not violate the Constitution of the U. States, so that we make them republican. We have the right certainly to arrange and fix our own matters in such a way as best to promote the public good. Yet, I will admit that it might not be very just, honest, or expedient, to oust some of these individuals of their rights. But we have the right to do it: we have the right to adjust our own land matters. If we insert this in the Constitution, how will it be possible to get round it? Some think it may be set aside by the judiciary; but the judiciary will come in under it, as part of the organic law of the land. If there is any thing which we regard as an evil or curse in the community, we have the right to remove it, submitting our action to the people of Texas; and when they have ratified it, it is past all remedy and beyond all relief. This may be hard; it may not be just. But such things are lawful in a state of revolution, when they will produce more good than harm. If the public good requires it, we have a right to do it, and ought to do it. As for precedents referred to upon this subject, you will find that they frequently have regard to certain treaties.

The Republic of Texas has seen fit to insert in her Constitution, a clause which set aside and made void just such claims. Is the Republic to be charged with having passed an unjust law? The judges have decided under it. If we adopt any thing in this Constitution as arbi-

trary as that, though it may be unjust in a moral point of view, yet it will be as obligatory as that was upon the judiciary of the country.

Mr. Jewett said: Mr. President, I feel myself compelled to oppose the reference of this subject, because, as I believe the session is drawing near its close, I fear that if we consign it to the committee, it will never again be brought forward. As the course of debate has been general, I trust I shall not be regarded as trespassing upon the indulgence of the Convention, if I give my views upon the subject freely and at once.

The magnitude of the interests designed to be protected by this article, entitles it to the most serious consideration of the Convention, and the result of our deliberations, I trust, will be a unanimous vote in its favor.

The article as originally referred to the committee on the General Provisions of the Constitution, provided that such laws and parts of laws only, should be continued in force, as were not incompatible with the Constitution of the United States. This portion of the article was stricken out, and the present form recommended by the committee. Its special object is to preserve and protect the rights of Texian citizens to their lands, also to guaranty any other privileges which they may have acquired under the Constitution and laws of the Republic. It is also designed to give to the Constitution of the United States, as far as practicable, a prospective, and provide against a retroactive effect over the institutions of our country.

As the case of forfeited lands is provided for in the schedule, and there may be another clause inserted as an additional article, for the purpose, a majority may not think it essential to insert the word forfeited here, though I would prefer its insertion at this place.

It cannot be denied, that while it is our duty to prepare a republican form of Constitution, that will secure admission to the United States, it is also one of our highest obligations, to defend, and preserve the honest claims to the people of Texas to their lands. A peculiar system of land laws, and rights created under the laws of Mexico, have now for many years been in force. The system is interwoven with the dearest rights of our citizens, and its ramifications are co-extensive with the limits of the Republic. These rights, Mr. President, have been earned and dearly bought. They have been won by our people, through privations through perils, through war and carnage. They have been growing with the growth and strengthening with the strength of Texas, from the day when Stephen F. Austin and his three hundred pioneers first planted themselves on the Brazos, and laid the corner stone of our political institutions. They were wrested by freemen, from a barbarous tyrant. Ten years of independent existence as a nation, has strengthened and consolidated these rights. They must be preserved. The people expect us to protect them: let them not be disappointed.

Some may object that we should insert no provision in our State Constitution, that might be objectionable in the United States' Congress, and that would have a tendency to prevent its acceptance by that body. This is a wise precaution. I would not intentionally and unnecessarily insert any article in our Constitution that might jeopard its acceptance. But I feel it my duty to do every thing, consistent with this intention, to protect and preserve the rights which have been won by the people of Texas, through so much suffering and toil. The people have been notified, also, by the President, in a proclamation, of contingencies than may follow the act of annexation. If any unfavorable contingencies will accompany annexation to the United States, it is our duty as faithful representatives of the people, to guard against them. If any spirits of evil contingencies can be evoked from the abyss of the future, I would exorcise them in advance. I cannot believe, Mr. President, that we ought to frame our Constitution solely with a view of obtaining admission to the United States, utterly regardless of the existing rights of our citizens. Nor can I believe that Texas is so poor—so weak—so near sinking in the sea of her political troubles, that she must catch at the naked rope of annexation, as the only chance for her political preservation.

Let the people of Texas be honestly told, what they may hope, or what they may apprehend from annexation. The adoption of this article will allay any alarm that may have been entertained by the people. It will prevent the act of annexation from reanimating the lifeless corpse of any old debt that has expired under the operation of our Constitution and laws. It will prevent the resurrection of any ancient land claims that have been consigned to perpetual repose by our statutes of limitation.

This article proposed to be incorporated in our organic law, affords a safeguard to the rights of the people. It will present a barrier against the possible encroachments of a judiciary, now a stranger to the peculiar laws of our republic.

It is our duty to adopt it as a rampart against some future avalanche of judicial construction, that might sweep across our republic, and carry away the rights of our oldest and worthiest citizens.

I cannot apprehend that the adoption of this article will hazard the ratification of our Constitution by the Congress of the United States. The people of that nation have always sympathized with us in our struggles. They have now thrown wide the door of annexation, and invited us to share in the advantages of their political institutions. They cannot desire to strip and rob us of our rights and immunities dearly won as they have been, as we are entering the Union.

Let us then adopt this article to protect our people, and prevent any evil consequences that might ensue from judicial assumption and misconstruction. I view the article as affording a bridge broad and strong.

over which the people of Texas may securely pass into the Confederacy of the United States. I trust the Convention will give it the support of unanimity.

Mr. *Brown* said he should oppose the reference, as he believed that a decision on the matters involved in the 20th and 21st sections, must turn on a question of expediency and not of law, and that the House were then prepared to dispose of it.

He said he did not rise for the purpose of debating that *expediency*, or of giving his opinion of the effect of those sections upon the welfare of the State; but he felt imperatively called on to notice the *legale exceptions* taken against their passage by the gentleman from Bexar, (Mr. Howard). He felt it due to candor and to both sides of the question, that it should be stripped of those embarrassments and laid before the Convention in its proper light.

The gentleman had presented an imposing and he thought a specious arrangement of legal principles and adjudicated cases, which, if he understood their bearing, opposed the passage of the sections; but constituted no reason for making the reference. With all the principles, and some of the cases, Mr. B. said he was acquainted before that day, but he hoped the gentleman would excuse him for saying that he could not perceive any assignable relation which they have to the subject under discussion.

The 21st section, [which is entirely independent of the 20th.] cancels all the colonization contracts subsisting between different Empresarios and the government of Texas, and entitles the Empresarios to indemnity for the rescission of the contract. The first position assumed by the gentleman was, that this section was repugnant to the Constitution of the United States; the next, that it was a principle of law, supported by volumes of decisions, that if a party to a contract made it impossible for the other party to fulfil it, the other would be released from his obligations, and entitled to all benefits under the contract, as much so as if he had performed the precedent conditions.

From these positions he reasoned, first, to the rejection of the Constitution we were making now, by the Congress of the United States, and then to the conclusion that the Empresario would be entitled to full compensation for services never performed; alledging that if the State had to pay the premium lands, it should gain the population. Mr. B. said it was not his purpose then to controvert either position; he would try them against each other, and see by that trial if *both* could stand. He said that he understood an unconstitutional thing to be nothing—a nullity—the same as if it had never existed—productive of no effect for good or evil. He would be glad to know from an act of this sort how the country could lose the population, or the Empresario be discharged. The Empresario sues for his premium lands—the State says he has not performed his contract—the Empresario says the State has relieved him

from that duty, and violated the contract by the 21st section. The gentleman from Bexar says the 21st section is unconstitutional. [He might add void]. Would it follow from this that the Empresarios could recover? Could it avail, for him to plead and prove that nothing had interrupted him? No such consequence as that feared and depicted can follow from an unconstitutional act.

Here Mr. Howard explained: he said he had not said that the 21st section was repugnant to the Constitution of the United States, so as to conflict with it: but that it was repugnant to a principle contained in both the Constitution of Texas and the United States: that he had before explained this.

Mr. B. said he did not hear that explanation last referred to; he knew he had not misstated the language of the gentleman when he addressed the House; that he did not hear the qualification by which they were limited in his subsequent remarks; but that explanation took away the whole force from his argument. Though the adoption of the section, if we were acting in a legislative capacity, under the Constitution of the United States, might be a departure from a principle contained in that Constitution. Yet, as we were in no measure amenable to that Constitution in the present instance,—though the principles might be variant. Yet if no conflict could ensue, the variance could do no harm, and the Empresario no good. It was the opposition to this that the gentleman had labored so ingeniously to establish,

Mr. B. said he would endeavor to point out the instances in which the Convention were and were not bound by the Constitution of the United States.

In all matters which were *executory*, and to be done after Texas should be annexed, it was necessary that the Constitution of the United States should be rigidly observed; any section in our Constitution providing for a departure from that instrument would be void; but in those things which were *executed*, and would be finally done and executed before the jurisdiction of the United States would begin, it was not necessary that we should conform our actions to that instrument. It never can be triable in any forum on earth, whether this section is in conflict with the Constitution of the United States, or the organic laws of any other land. Nor could the Empresario question our right in any court to rescind these compacts. The affirmative acts of Texas, entirely executed, while an independent State, can never [if wrong] be set right or avoided by adjudication in any court. The court would tell the plaintiff that it had no rule by which they could be tried. Mr. B. said he had no idea that the adoption of the section could hazard the acceptance of the Constitution when it came before the Congress of the United States. If we should comply with the conditions of the joint resolutions, he felt no alarm. Our government would not be a monarchy, an aristocracy, or a democracy: it would not be compounded of that,—but a plain Republic, in which all the citizens professing the same qualifications were

admitted to *equal political rights*; all having an equal share in its control and protection. The Congress cannot examine the necessity under which we labor, or know that the Empresario has not or does not acquiesce in the alteration of his right. It cannot look behind the Constitution. Our Constitution only will be tried by a political test. If after its acceptance, it will have no prospective operation inconsistent with the Constitution of the United States, or the joint resolutions, it must be accepted. The effect before a court or Congress of the United States, would be just the same as if those sections were taken out of the Constitution, and being submitted separately by the Convention, were to obtain the ratification of the people. So much of our constitution as relates to *government*, will be strictly searched; but no notice can be taken of events which will transpire in the lifetime of the Republic. Mr. B. said he would notice the allusion of the Constitution of Texas. He deemed it a sufficient answer to say that we were not acting under that Constitution, but above it, though he did not admit that the allegation of any civil contract would be impaired by the adoption of either section. The principle in the Constitution is a restraint on the Congress of Texas, not on this body. If the Empresarios relied on this for their security, they must have been singularly blind to another principle, that at the will of the public, the whole Constitution was liable to repeal—the whole nation to anarchy; and, consequently, all legal rights to existing instruments. The right of the majority to change or repeal the social compact, carries with it necessarily all rights which are consequent and incidental. It might form a reason, and a just one for changing the Constitution, that *any evil* existed which could not be reached as the government was constituted at present. Mr. B. said he knew the gentleman from Bexar had relinquished every thing at which he aimed, by quoting the *law*, when he gave his meaning of collision between the Constitution, and every thing at which he aimed in stating that collision. It turned out to be a variance, merely, under circumstances so widely different, that no analogy could be drawn. It embodies a different but not an antagonistical principle: one is a case in the Constitution; the other, a principle over the laws. It can make no jar, produce no unhappy conflict, and will be harmless to the future government.

Mr. B. said he admitted it to be a principle of natural law, from which no community ought to swerve, that private rights fairly acquired, should not be impaired or taken away by a change of government. The principle, however, was subject to so many modifications; that as an abstract principle, it could not be regarded; the change of government may necessarily operate a change on private rights, and almost in every instance does. The true principle is, that when the change can be avoided, it should be: but he did not understand that the section would impair any vested right. The Empresario had no reason to know that the feeling of the Legislature would be the feeling of this Convention: whatever rights they have, were accepted on a contingency of a change

in government and national policy. Their rights were vested so long as the policy which vested those rights was unalterable; they could not have read any natural, [or if gentlemen will call it so] national law to the contrary: for a written constitution, or a legislative enactment can, and often does expressly contravene those rules. What is to become of our treaties, if a different principle should be carried out?

The section will entitle the Empresarios to all the acquisitions they have made; and compensates them for their right to make more. If it should turn out that those contracts were bottomed in fraud, or that an immoral population would be brought to our shores by a continuance of the contracts, who can question our rights by making fair indemnity to annul them? But if the contracts were fairly made, and the feeling still good, there was no right in law, and no reason in fact to make any change.

In respect to the 20th section, Mr. B. said, it left the rights of the government where they would stand, if that section should not be adopted. It was but an affirmative of the law as it stood before. This was the law written in the Constitution when overtures were made by the United States. They surely could not object to it. The gentleman from Bexar had argued the question as if the effect of the section was to decide between the old grantees and subsequent claimants. It will not be so; if the right should be lost by the original grantees, it will go to the government, who will have the power, for good reasons, to remit the forfeitures, or to cede away the property forfeited. The government will not be prevented, as the gentleman supposes, from consenting to any treaty between the United States and Mexico, providing for the remission of forfeitures; but the United States have not demanded it of us for her own citizens, who refused to participate in the war, and thus lost their lands; nor is it probable that such terms will ever enter into any future treaty. Mr. B. said the law had been the same for the last nine years: no rights had ever been tried under it, and he wished those rights to continue in suspense, to be enforced or relinquished as after events might determine: that there was an omitted class of meritorious claims which might be lost, but he wished those to form the subject of an independent provision.

Mr. Howard said: I understand gentlemen to contend, and it is the basis of their argument, that when in a state of revolution, we may adopt any measure we may see proper, without limit. I would ask them if they think we have a right under the law of nations to cancel the debt we owe to Mr. Dawson? Suppose a man should take a fancy to my land, and conceive he ought to pay me one thousand dollars for it, I would ask the gentlemen who have spoken, if they believe that this Convention has the right, the revolutionary right, to pass a resolution taking the land from me, and giving it to him at that price? Can any one imagine that the Convention has the power to do it? If any one

supposes so, I can only tell him that he is not acquainted with the horn books of national law. For they do say, in passing through all changes whatever in the forms of government, that the debts, contracts and obligations of the community remain unchanged. Gentlemen had better consult their books before they take that position upon this floor, because it may be a rash position for members here to take. I have consulted the books, and let me say that the principle for which I contend is universally laid down in them. For as Chancellor Kent says, the community is the same, and there is no change in the debts and obligations of that community. They are unaffected and untouched, and there is no way by which you can reach them, except that of brute force, christen it if you please with the name of repudiation. Private property, rights, duties and obligations to individuals are as different from political rights and obligations, as day is from night. I am almost ashamed to repeat a principle here, so familiar to every member of the legal profession. I do not contend that what we might do would be void, because it might violate the present Constitution of Texas; but I say it certainly would look singular if we should deliberately violate this rule in relation to contracts in forming a Constitution. Neither do I say it would be void, because a violation of the Constitution of the United States. But I say it would be void, because a violation of international law; and does not the President of the Convention and every member of it know that the international law of the world is a part of the municipal law of every country, that there are certain principles which no nation is at liberty to disregard? This is a violation of private contract: it is taking property from one man and giving it to another.

All I ask for is this: that the question be referred to the judiciary committee, that they may view the whole subject, and examine the ground we are attempting to tread upon, and see whether we have a right to go there, in accordance with the law of nations and the principles of justice.

Mr. Davis said: I shall object to the reference, as I see no good which can result from it. The subject has been discussed now almost half a day; the Convention is perfectly conversant with it, and prepared to vote upon it knowingly. As regards the other section, I see no necessity for referring that to the judiciary committee. It has already been referred, and reported upon. I entertain the opinion that this Convention has the power, but should be extremely cautious in the exercise of it. This body stands upon higher ground than the Legislature; they are creating the organic law of the land, and have the right to do almost every thing they please. Upon the subject of the 4th section, I am glad to find that the gentleman from Victoria agrees with me that individuals who have located upon lands subject to a forfeiture or escheat, had no right to do so: if so, their locations are null and void, and the patents granted them are null and void: and the lands will be

appropriated to the purpose of paying the public debt. I will offer an amendment declaring all locations made upon these lands forfeited, and subject to be escheated, and all patents issued upon them, null and void. We are not here for the purpose of adopting means to benefit speculators or gentlemen who have located upon these lands. If we do any thing in relation to this subject, if we point out the mode by which forfeitures and escheats shall be declared, and the State is at the expense of it, then let the government have the benefit of these lands agreeably to the act of the Legislature upon the subject. If they have been set apart, and if the Legislature intended to set them apart for the payment of the public debt, and the gentleman from Victoria would seem to say that is the fact, then these individuals have located them with their eyes open, and should not come to this Convention and ask us to adopt provisions in our Constitution to place them in possession of these lands. I will notify the House, that I shall offer an amendment which will carry out the views of the gentleman from Victoria; and I am very much gratified to see him and myself occupying the same ground upon this subject.

Mr. *Armstrong* of J., said. It is laid down as a violation of the principles of international law, that this Convention should take into consideration any thing in relation to the question under debate; and the gentleman seems to call upon me to show that the Convention has the right to take it into consideration and act upon it. I will answer, that, so far as the laws of nations are concerned, they are considered as the rule of action between governments or nations in their intercourse with each other. Then how is it possible for the State of Texas to violate the laws of nations, when it is to be an integral part of a nation itself? These laws are not brought to bear between States. Were the laws of nations violated by the State of Mississippi in repudiating her bonds? She had a right to incorporate a provision repudiating them, in her new Constitution; and not only were the laws of nations not thus interfered with, but the laws and Constitution of the United States were not thereby interfered with. I agree with the gentleman with regard to the justice of depriving Mr. Dawson of his dues; but at the same time I would ask what law of the United States, or of nations would be violated by it? We have a right to do it; and it would not be considered brute force, if expediency required it. The general good might require a certain class of individuals to be proscribed; and we might insert articles in this Constitution, ousting them entirely from their rights. We have the power to do it; and how could it be set aside? Would the gentleman call in France and England to settle the matter? If a principle of the laws of nations were violated, these nations would have a right to interfere. But it is obvious that these nations have nothing to do with us in the formation of the organic law of the land.

Mr. Hemphill moved to adjourn until half past 8 o'clock, to-morrow morning. Lost.

Mr. *Lipscomb* said: I will not, Mr. President, detain the Convention long: I shall make my remarks very brief. I will here promise, that so far as the question of the right of property is involved in this subject, my immediate constituents have little or no interest in it. But in the principles involved, they, in common with the rest of the inhabitants of the Republic, are deeply and vitally interested. No one will subscribe more readily than myself to the position that it is important to tranquilize and quiet the public mind in relation to litigated questions; that the statutes of prescription should be sustained, and things long settled should not be again ripped up. The President of the Convention will recollect, that when this subject was mentioned in conversation, I approved of a section of this kind; and I now say, that as reported, it meets my hearty concurrence. I believe that, as reported, it will effect all the great objects for the attainment of which so many are anxious; and I believe that many are driven to the support of amendments and ultra measures, by the fear that these objects will not be accomplished. The great objects to be effected seem to be, that the decisions which have been made, the laws which have vested rights, and the laws which have taken away the exercise of rights or declare any right annulled, shall remain inviolate. So far I am willing to go. This is intended, I believe, to affect a great class of cases, aimed at, whether hit or not, by the Convention, in its session at Washington, in 1836. It was the intention of that body to nullify all that class of cases called "Mason cases," growing out of the sales at Monclova, and which were assumed by the Convention to be fraudulent, and declared null and void. Then they should remain so. I am not disposed to go into the inquiry whether the Convention assumed greater power than belonged to it; whether their action was expedient or not. No injury can result now from this exercise of power. When the government of the United States offered to receive us into the Union, this was known at the time to be embraced in the fundamental law of the land. That law has been sustained; we have enjoyed nine years of peace and quiet; and I hope these claims will never be revived, but sleep forever in the tomb of the capulets. I regret exceedingly that any amendment has been offered to this section. Some gentlemen of my much honored profession say that the amendment offered makes no difference in the section. I believe otherwise; I believe it does introduce a vital and important change. It has been said that the word "forfeited" is harmless; I think I can show that it may possibly do injury. I will take up the subject as a question of policy, to be coolly and calmly discussed, and beg the Convention to give it the consideration to which such a question is entitled. I object to this amendment, because it embraces two classes of claims which I believe should be left open to the action of the Legislature. The first class includes claims rejected by the Board of Land Commissioners, which, for some cause, have not been sued within the time prescribed by law. Adopt this word "forfeited," and what is the result? The Legislature will not have the power

to pass any law affording any relief to such claimants, however strong the plea they may urge: because the Constitution, the fundamental law must govern. The courts can give no relief, because, as they will say, these are cases of forfeiture, and they can only inquire whether application has been made in time. Possibly there may be many cases where good excuses may be rendered, such as every member would say ought to have weight, and make the cases exceptions. But they cannot make exceptions, if this amendment is adopted, and becomes the law of the land, which cannot be altered or amended. I would prefer leaving it to the Legislature to dispose of these peculiar cases which are entitled to grace and favor, as they might present themselves. This, it seems to me, would be wise and just, would violate no principle, and do injury to no man. There is a difference of opinion with some of the profession, as to where application should be made to clear up head rights, whether in the county of the claimant's residence, or that in which the certificate was issued. It is well known that there are several depopulated counties, where the court has had no sessions. Does not this circumstance afford a good excuse in many cases? Cannot claimants make a strong appeal to the Legislature to make an exemption of such a class of cases? But there is a great class of cases perhaps most affected by the amendment; that class which would be called "escheated." And I care not whether these individuals took the Sabine shoot, or fled over the Rio Grande: I would say that both ways, in many cases, they have an excuse which ought to be formally listened to. Many of them have retreated with their families under circumstances known to the Legislature, and which would induce the Legislature to make an exception of their cases. Now, as long as the law stands as it is, it is inchoate and imperfect, and the Legislature has the power to relieve against it. I believe, at this day, to confiscate a man's property for opinion's sake, would be considered half a century or more behind the age in which we live; it would do no credit to us in our Constitution. I believe it would be now perfectly unique; that it would stand alone, in bold relief, as the declaration of a people crying out for free institutions and toleration in every thing. This resolution confiscates a man's property merely for avoiding a participation in the struggle. I am not prepared to go that length. In case of an active participation against us, there might be cases not entitled to grace and favor; but there is a large class, in which we should listen to any thing to be said in their favor, and we shall much more readily find an excuse for those in the West, than for those who took the other shoot. Here were people speaking the language of the invader, and accustomed to believe in the omnipotence of the invader; and if they fled they are surely entitled to more favor than those of our own people, who, yielding to their selfish fears, fled eastward. I fully concur in the opinion of the gentleman from Bexar, that there cannot be found a modern treaty, at the close of a war, where peace has been concluded, in which a stipulation for the restoration of

all property forfeited for opinion's sake has not been made a point of honor. The power losing its territory insists upon that as the first thing. So, at the close of the war of the revolution, this difficulty was presented in the case of the loyalists, as they called themselves, or refugees, as they were called by their opponents. Some of the States proceeded to declare their property confiscated; but most of them went no farther; there was no action under that law. The question came up in the Supreme Court of the United States, in the case of Fairfax's heirs, in which the court held the title of the State to be inchoate and imperfect, and that of the holder of the property not to be affected, until office found. Well, sir, if we go on and say that all this property shall be confiscated, I will not say we shall interpose such an impediment as will endanger our reception into the Union, but I will say we shall at least cause some embarrassment. Is it not reasonable to suppose that those who are looking out for an objection to hang a difficulty upon, may seize upon this? I think, then, it is safer, not tying up the hands of the Legislature, so that they could not do an act of justice, to let things remain where they are, and strike out the word "forfeited." It is a small word, but potent in its effect. With these objections to the word "forfeited," I feel, however, much disposed to be in favor of the section as it originally stood. I would say to those gentlemen who feel an interest in the question presented by these claims, that it is not a new one to me; it is one which I have investigated with diligence; and I believe the proposed action assailable upon many other grounds. But I am willing to vote for the section, and was pleased with it as offered by the committee. It had been adopted in our Constitution, it had slept there, and the people of the United States, in offering us terms, must have been aware of it. If any are under the impression that the word "forfeited" would strengthen their claims, I hope they will not insist upon it; for I believe it will do them no good, and in other quarters may do great injury. I am sorry that my friend from Bexar has united this section with the other, thus, in my opinion, putting a fair section in bad company. I would prefer to have this section stand separate and apart; then it need not be embarrassed by any objections which may be urged against that. I trust the resolution will yet be modified, and the sense of the Convention taken upon the 20th section before the question is put on the reference to the Committee on the Judiciary.

I will remark further, as to forfeitures and escheats, that the 4th section of the schedule makes ample provision, that the Legislature shall provide a mode, in cases not entitled to grace, for declaring these lands absolutely forfeited. And I am glad that the gentleman from Victoria has changed his ground in one respect. The proceeds, at first, I recollect well, were to be applied to purposes of education; I am glad he has found out that the public faith requires that they should go into the public fund for the payment of our debt. If so, let us not violate it. The 21st section I do not intend to dwell much upon; though objections at

every point present themselves to my mind. It has been emphatically asked, if we pass the section, what court can revise our action; if we have not the power to insert such a provision? Though, for the sake of argument, I admit that we have the power, I will not prostitute the word *right*, though I know they are often construed as meaning one and the same thing; say that we have the power; there is another court besides our judicial tribunals and the Supreme Court of the United States, of which many of my constituents are very much afraid; a court which is to assemble next winter; and when this Constitution is submitted to that tribunal, does any member believe that the Congress, the Senate of the United States, will look to the Constitution alone? It was not so in the case of Missouri. But questions of policy and expediency came up then. Many of the senators and members of Congress still make battle against us, and feel at liberty to attack any Constitution which we may send on for their acceptance. If we frame a Constitution subject to an objection of this sort, will not those who are disposed to cavil at every thing, say that they will form no union, that they will have no association with a people who undertake to violate a contract, or interfere with private rights? For myself, I say it in the presence of God and this Convention, if I were separate and apart from Texas, and representing a portion of the Union remote from Texas, this would be conclusive with me; I would not vote for a Constitution containing such a provision. I am not unwilling to do something in relation to these Empresario contracts; I believe we can do something. I believe we can do it by the adoption of a resolution prohibiting the Legislature from extending the time to contractors, and from relieving them; providing for instituting an immediate inquiry into the state of these contracts, that if forfeited, they may be declared void. So far I will go, and no farther. In conclusion; I repeat, I hope that the sections will be separated.

Mr. *Howard* withdrew his motion as far as it related to the 21st section, and moved the previous question; which motion was carried, the main question being the adoption of the 20th section.

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

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

No—Mr. Hunter—1.

So the section was adopted.

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

Tuesday, Aug. 5th, 1845.

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

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

Mr. Davis, from the select committee, to whom was referred the communication of the Commissioner of the General Land Office, of the 31st ult., made the following report :

Committee Room, August 4, 1845.

To the Hon. T. J. Rusk,

President of the Convention :

The select committee, to whom was referred the communication of the Commissioner of the General Land Office, upon the subject of that Department, have had the same under consideration, and a majority of the committee have instructed me to make the following report :

[Signed] JAMES DAVIS,
Chairman.

By reference to the communication referred to, it appears that the expenses of the General Land Office, at present, are as follows:

Salary of Commissioner,	\$1,500
“ Chief Clerk,	1,050
“ Spanish Clerk,	1,050
“ Draftsman,	1,050
8 Assistant Clerks, \$850 00 each;	6,800
For County Maps and connecting Surveys,	1,000
Contingent expenses,	200
Stationary,	200
Patents,	1,000
Surveying Land Scrip,	500
	\$14,350

All of which expenses are now paid by the government, which seems to be an unfair appropriation, when we consider that those who obtain patents are the only persons benefited.

The great reduction of the resources of the country, consequent upon the change from the present to a State government, imperatively demands that the Land Office should support itself. When the contem-