

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

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

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to rarebooks@law.utexas.edu.

If you are uncertain whether you need permission to use these materials, please contact us at rarebooks@law.utexas.edu.

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

Saturday, Aug. 9th, 1845,
Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Ochiltree offered the following resolution :

Resolved, That the judiciary committee be instructed to examine Decree No. 308, of the laws of Coahuila and Texas, by which S. M. Williams, as empresario, is authorized to create a bank, to be called "The Commercial and Agricultural Bank;" and to report to this Convention whether, in their opinion, unless prevented by a constitutional restriction, the said bank will be authorized to be established.

On motion of Mr. Young, the rule was suspended, and the resolution adopted.

Mr. Armstrong of R., moved to re-consider the vote adopting the clause under the head of slaves; which motion was laid on the table.

On motion of Mr. Hemphill, the report of the judiciary committee, made on yesterday, on the subject of forfeitures, was taken up.

Mr. Cunningham moved to lay it on the table.

Lost.

Mr. Van Zandt moved to lay it on the table until Monday next.

Lost.

The ayes and noes were then called on the adoption of the report and stood as follows :

Ayes—Messrs. President, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Darnell, Davis, Everts, Forbes, Hemphill, Henderson Hicks, Hogg, Horton, Howard, Irion, Jones, Kinney, Love, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant and Ochiltree. —37.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Bagby, Clark, Cunningham, Evans, Gage, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Parker, Van Zandt, White, Wright and Young—20.

So the report was adopted.

The report of the judiciary committee on the subject of marriages made on yesterday, was taken up.

The ayes and noes being called, upon the adoption of said report, stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Burroughs, Caldwell, Cazeau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, M'Neil, Miller, Moore, Navarro, Parker, Power, Runnels, Rains, Scott, Smyth, Standifer, Tarrant, Ochilree, Van Zandt, White and Young—52.

Noes—Messrs. Brown, Evans, Hunter and Lewis—4.

So the report was adopted.

The report of the judiciary committee, made on yesterday, in relation to the establishment of a chancery court, was taken up and adopted.

On motion of Mr. Gage, the additional section offered by himself, to come in as the 28th section of the general provisions, was taken up.

Mr. Howard moved to amend, after the words "legislature shall," by inserting the words "to have power to provide."

Which was adopted.

Mr. Parker moved to strike out the word "fifty."

Lost.

The question was then taken on the section offered by Mr. Gage, as amended.

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs. President, Armstrong of R., Bache, Brashear, Cazeau, Darnell, Davis, Evans, Gage, Henderson, Hogg, Holland, Howard, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, Lipscomb, Navarro, Parker, Power, Rains, Standifer and Ochilree—29.

Noes—Messrs. Anderson, Armstrong of J., Bagby, Baylor, Brown, Burroughs, Caldwell, Clark, Cunningham, Everts, Forbes, Hemphill, Hicks, Horton, Lumpkin, Mayfield, M'Gowan, M'Neil, Miller, Moore, Scott, Smyth, Tarrant, Van Zandt, White and Young—26.

So the additional section was adopted.

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

ORDERS OF THE DAY.

The report of the special committee, Mr. Davis chairman, in relation to the land office, being first in order, was taken up; and,

On motion of Mr. Lusk, the article reported by said special committee, was laid on the table.

On motion of Mr. Jewett, his motion (made on yesterday) to reconsider the vote adopting the section of the general provisions, as offered by Mr. Runnels, to provide by law for the compensation of all officers, agents, &c.; and to prohibit them from granting extra compensation to officers, &c., was taken up and reconsidered; and,

On motion of Mr. Jewett, referred to the committee on the Legislative Department.

Mr. Scott offered the following amendment, to come in at the end of the clause on slaves:

“The foregoing clauses concerning slavery, shall not apply to that portion of territory lying north of thirty six degrees and thirty minutes, north latitude; but therein slavery, or involuntary servitude, except for crime, is hereby prohibited.”

Mr. *Runnels* said: If I could see that any difficulty could arise under the clauses referred to, I should certainly vote for the gentleman's amendment. But I can see none whatever. It was not contemplated by the Congress of the U. States, that we, in the adoption of a State Constitution under the provisions of their resolution, should make one portion of the State slave holding and another non-slave holding. In the formation of a State government in that territory slavery will be prohibited, but until it is attempted to form a State government there, these clauses in the constitution have no bearing, and can present no difficulty. It would be to me an anomaly in State governments to provide that one portion of a State should be non-slave holding and the other slave holding. This would be totally unnecessary in my opinion, it would be an extraordinary course on our part to conciliate the abolitionists of the North, unjustifiable and inconsistent with a proper self-respect.

On motion of Mr. Moore, the amendment was referred to the committee on the judiciary.

On motion of Mr. Hemphill, the report of the committee on general provisions was laid on the table for the present; and,

On motion of Mr. Hemphill, the resolution offered by himself on the 30th July, providing that no provision of this constitution shall be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from any of the immunities and privileges to which he is entitled under the constitution of the United States, was taken up and referred to the committee on the judiciary.

On motion of Mr. Davis, the report of the committee on general provisions was again taken up.

The 1st section of the schedule was read by the secretary.

On motion of Mr. Rusk, the schedule was laid on the table.

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

On motion of Mr. Van Zandt, the secretary was required to make out a fair copy of the general provisions, with the amendments—except such portions as are laid on the table, and referred to committees.

Mr. Love moved to adjourn until Monday morning, 8 o'clock.

Lost.

Mr. Ochiltree offered the following resolution :

Resolved, That a committee of nine persons be appointed by the President, whose duty it shall be, carefully to supervise the several reports which have been adopted by the convention, to compare them—correct ungrammatical expressions, without altering the sense, and report them to the convention at the earliest day practicable.

Which was laid on the table one day for consideration.

On motion of Mr. Anderson, the preamble to the constitution was taken up; and,

On motion of Mr. Howard, the same was laid on the table.

Mr. Hemphill, chairman of the committee on the judiciary, to whom was referred the article of the constitution in relation to the judicial powers of the State, reported the same back to the convention, with sundry amendments and additional sections; and,

On motion of Mr. Cazneau, the report of the committee was taken up.

The Secretary then read the amendments, as offered by the committee.

1st. To the 5th section add the following: "and they shall hold their offices for six years."

Adopted.

2d. Strike out the 6th and 7th sections.

Adopted.

3d. In the 13th section, strike out between the words "legislative" and "shall be," and insert "and who."

Adopted.

4th. In 17th section, between the words "and" and "over," in the line next to the last, insert the following: "original jurisdiction and general control."

Mr. Howard said he would move to strike out the word "original," for this reason: that as it stood, we should have two Probate Courts, and parties might take out administration either in the Probate Court or the District Court. He was willing to say that a right of review of Probate proceedings shall exist in the District Court, but was unwilling to give that court original jurisdiction. It occurred to him that this was establishing an inconvenient rule. If it was expedient to say that the District Court shall have exclusive control of this subject, he was willing to give it to that court. But he was unwilling to create two courts with the same jurisdiction.

Mr. Howard moved to re-commit the amendments to the committee.
Lost.

Mr. Howard offered the following amendment to the 4th amendment of the committee: "Provided that the original jurisdiction hereby conferred on the District Court shall not be so construed, as to authorize the District Judge to grant letters of administration."

Rejected.

The 4th amendment of the committee was then adopted.

Mr. Lipscomb offered the following amendment.

Add, to the 17th section, "under such regulations as shall be prescribed by law." Adopted.

5th amendment, additional section—

"In the trial of all causes in equity in the District Court, the plaintiff or defendant shall, upon application made in open court have the right of trial by jury—to be governed by the rules and regulations prescribed in trials at law."

• Which additional section was adopted by the Convention.

6th amendment, additional section, as follows:

"In all cases arising out of contract, before any inferior judicial tribunal, where the amount in controversy shall exceed _____ dollars, the plaintiff or defendant shall, upon application to the presiding officer, have the right of trial by jury."

On motion of Mr. Ochiltree, the blank was filled with "ten, and the section adopted.

7th amendment, additional section, as follows:

"In all cases, where justices of the peace, or other judicial officers of inferior tribunals, shall have jurisdiction in the trial of causes, where the penalty for the violation of a law is fine or imprisonment, [except in cases of contempt] the accused shall have the right of trial by jury."

Which was adopted by the Convention.

Mr. Young offered the following, as a substitute for the 5th section:

"The Judges of the Supreme and District Courts shall be elected by joint vote of both Houses of the Legislature, and shall hold their offices for six years."

The chair decided, that amendments might be made to the report of the committee on the judiciary; from which opinion Mr. Howard appealed.

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

Monday morning, August 11, 1845.
Half-past 8 o'clock, A. M.

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

On motion of Mr. Gage, Mr. Howard was excused from attendance on the Convention, in consequence of sickness.

Mr. Hunter moved to re-consider the vote adopting the additional section offered by Mr. Gage, exempting two hundred and fifty dollars worth of household property from taxation.

Mr. Hunter moved to lay the motion on the table. Lost; and vote re-considered.

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

Ayes—Messrs. President, Armstrong of R., Bache, Brashear, Cazneau, Cuney, Darnell, Davis, Evans, Gage, Henderson, Hogg, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Lewis, Love, Lipscomb, Navarro, Parker, Power, Rains, Runnels, Standefer and Ochiltree—28.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bagby, Caldwell, Clark, Cunningham, Everts, Forbes, Hicks, Horton, Hunter, Latimer of R. R., Lusk, McGowan, McNeill, Miller, Moore, Scott, Smyth, Tarrant, Van Zandt, White, Wright and Young—26.

So the section was adopted.

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

ORDERS OF THE DAY

The appeal of Mr. Howard, from the decision of the chair, deciding that amendments could be made to the report of the judiciary committee before the same had been engrossed, being before the Convention, was taken up, and the chair was sustained.