

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

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"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.

Mr. Young's substitute for the 5th section of the report of the judiciary committee, providing for the election of Judges of the Supreme and District Courts by joint vote of both Houses of the Legislature, being before the House.

Mr. Davis called for a division of the question.

The question on striking out the original section was taken; upon which

The ayes and noes were called, and stood as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Cuney, Darnell, Davis, Evans, Gage, Hemphill, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, McNeill, Scott, Smyth, Wright and Young—23.

Noes—Messrs. President, Baylor, Bache, Brashear, Brown, Caldwell, Clark, Cunningham, Everts, Forbes, Henderson, Hicks, Hogg, Horton, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standeter, Tarrant, Ochiltree, Van Zandt and White—34.

So the Convention refused to strike out.

Mr. Mayfield moved to amend the substitute offered by Mr. Young, by striking out the words "by the Legislature," and insert "by the people."

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

Ayes—Messrs. Bache, Brown, Clark, Cuney, Evans, Hicks, Hogg, Holland, Lewis, Love, Lumpkin, Lipscomb, McNeill, Parker, Power, Rains, Standeter, Tarrant and Ochiltree—19.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Brashear, Caldwell, Cazneau, Cunningham, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lusk, Mayfield, McGowan, Miller, Moore, Navarro, Runnels, Scott, Smyth, Van Zandt, White, Wright and Young—38.

Lost.

The question was then taken on Mr. Young's substitute, and rejected by ayes and noes, as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Clark, Cunningham, Darnell, Davis, Evans, Gage, Hemphill, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, McNeill, Smyth, Van Zandt, Wright and Young—24.

Noes—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Cunningham, Everts, Forbes, Henderson, Hicks,

Hogg, Horton, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Standefer, Tarrant, Ochiltree and White—33.

Mr. Darnell moved to strike out the words "by the Senate," and insert "two-thirds of both Houses of the Legislature," in 5th section.

Lost.

Mr. McNeill offered the following substitute for the 5th section :

"The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their offices for six years. The Judges of the District Court shall be elected by the qualified electors of their respective districts, and shall hold their offices for four years.

Rejected. ●

Mr. Forbes offered the following amendment:

Add, to the 5th section, "and upon the expiration of their regular term, or the unexpired portion of any regular term, for which any Supreme or District Judge shall have been elected, the same shall be re-nominated by the Governor—subject to the approval by the Senate, as in the first instance of his nomination."

On motion of Mr. Gage, the word "shall," before the words "be re-nominated," was stricken out, and the word "may" inserted.

Mr. Ochiltree moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the 5th section, the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Everts, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standefer, Tarrant, Ochiltree and White—31.

Noes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Clark, Cunningham, Cuney, Darnell, DAVIS, Evans, Gage, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, McNeill, Scott, Smyth, Van Zandt and Young—25.

So the section was adopted.

Section 1st adopted.

Mr. Lipscomb offered the following substitute for the 2d section :

"The Supreme Court shall consist of three Judges, who shall choose the presiding officer: and two, however, shall form a quorum to do business.

Rejected.

Mr. Caldwell offered the following amendment to the 21 section :

"Strike out all after associates, in 2d line, and insert the following: "until such time as the Legislature may deem it expedient to increase the same to three associates, a majority of whom shall, at any time, form a quorum." Lost.

Mr. Evans offered the following substitute for the 2d section :

"The Supreme Court shall consist of two Judges, until the Legislature may increase its number to four."

Rejected.

The section was then adopted.

Mr. Scott offered the following substitute for the 3d section :

"The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, in such cases, and under such rules and regulations as shall be prescribed by law: and said court, and the judges thereof shall have the power to issue writs of *habeas corpus*, and such other remedial and original writs as may be necessary to give it a general superintendance and control over the District Courts; and shall hold its sessions at such times and places as the Legislature may prescribe.

Rejected.

Mr. Armstrong of J., moved to amend after quo warranto," by inserting the words "prohibition and certiorari." Lost.

Mr. Love offered the following amendment to the 3d section: Add, "provided the original jurisdiction and control shall only extend to enforcing its own judgments, and compelling the District Judges to proceed to the trial and judgment in a case."

Mr. Love said: I see a provision in the section to which I have a great objection. It is that clause which gives the appellate court a general superintendance and control over all the acts of the district courts. I am opposed myself to the principle of permitting the appellate court to take from the district courts any question which may be depending there upon the application of a lawyer, and staying all proceeding until the case has been investigated in the supreme court. Any lawyer can make out a plausible showing for this purpose. It is the nature of power to be accumulative. In my opinion, the best remedy is the usual power of appeal or writ of error, not arresting the proceeding. I am told that there is a provision of this sort in the Constitution of Alabama; and if so, I will venture to say that it is not in that of any other state in America. It seems to me very improper for the supreme court to exercise general superintendance and control over the district courts, except by way of appeal or writ of error. It will create dissension, and increase litigation.

Mr. President *Rusk* said: I shall vote against the amendment. I will agree with the gentleman from Galveston that power is accumulative. But the question is, which is the more dangerous, to trust one man with it, or three? I think this is power which ought to belong to the supreme court. I recollect that one of the first cases which came before the supreme court, while I had the honor of being a member of that body, was one of extreme hardship, arising from the action of the district judge in the court below, and one which we could not entertain, because we had only appellate jurisdiction, and the court below kept the case under advisement without giving a final decision. If the amendment prevail, such a case cannot be taken away until a final decision in the court below. The judge may then go on and make one interlocutory decision after another, until one of the parties in interest may die, without making a final decision in the case.

The amendment was adopted.

Mr. *Rusk* said he should move a re-consideration, in order to record his vote against it.

Mr. *Mayfield* said: Notwithstanding my feeble health, I will make a few remarks. I am inclined to think that the amendment offered by the gentleman from Galveston ought not to prevail. It does not follow, because power may be abused, that those should not be vested with it, who are charged with the administration of the laws of the land. The evils which have been depicted may certainly arise. A cunning and imperious lawyer may impose upon the supreme court; but I do not think it a probable case, if that court is selected for talents, wisdom, and integrity. I say, then, let us make use of general terms, and give that court the power to exercise a wholesome control over the other courts of the country. The district court in many instances may proceed improperly, may enter interlocutory judgments, and refuse as remarked to sign a judgment at all; and there would be no redress unless we clothe the court with just such a power as contemplated in the section as it originally stood. I am satisfied that our supreme court will always look to the true interest of the country, and the credit of the bench itself. I hope therefore that the vote adopting the amendment will be re-considered.

On motion of Mr. *Runnels*, the vote just taken on the adoption of Mr. *Love's* amendment, was re-considered, by ayes and noes, as follows:

Ayes—Messrs President, *Armstrong* of J., *Armstrong* of R., *Bagby*, *Bache*, *Brashear*, *Caldwell*, *Clark*, *Cunningham*, *Cüney*, *Darnell*, *Davis*, *Gage*, *Henderson*, *Hicks*, *Horton*, *Holland*, *Jewett*, *Mayfield*, *Moore*, *Navarro*, *Rains*, *Runnels*, *Scott*, *Smyth*, *Tarrant* and *Van Zandt*—27.

Noes—Messrs. Anderson, Baylor, Brown, Evans, Everts, Forbes, Hemphill, Hogg, Hunter, Irion, Latimer of L., Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Standefer, Ochiltree, White and Young—24.

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

Ayes—Messrs. Anderson, Bagby, Baylor, Brown, Cazneau, Cuney, Evans, Everts, Forbes, Hemphill, Hogg, Hunter, Irion, Latimer of L., Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Runnels, Standefer, Tarrant, Ochiltree, White and Young—29.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brashear, Caldwell, Clark, Darneff, Davis, Gage, Henderson, Hicks, Horton, Holland, Jewett, Mayfield, Moore, Navarro, Rains, Scott, Smyth and Van Zandt—23.

So the amendment was adopted.

Mr. Hemphill offered the following amendment :

In 9th line, 3d section, after the words "district courts," insert "and appeals may be taken from interlocutory judgments, under such rules and regulations as may be prescribed by law, and the supreme courts."

Adopted; and the section as amended was adopted.

Section 8th adopted.

Mr. Smyth offered the following, as a substitute for the 9th section :

"The judges of the supreme and district courts shall receive a compensation for their services, which shall neither be increased nor diminished during their continuance in office. The first judges of the supreme court, appointed under this Constitution, shall receive two thousand dollars annually; and the first judges of the district court shall receive fifteen hundred dollars, annually."

Mr. Van Zandt moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question, the adoption of the 9th section, was put and carried.

Section 10th adopted.

Mr. Standefer offered the following as an additional section :

"The Legislature shall not have power to increase or diminish the salary of the Governor, or judges, for ten years from the adoption of this Constitution by the people."

Which was, on motion of Mr. Rusk, laid on the table.

Section 11th adopted.

On motion of Mr. Hemphill, the report was laid on the table for the present.

The committee on the judiciary made the following report:

Committee Room, Aug. 11th, 1845.

To the Hon. THOMAS J. RUSK,

President of the Convention :

The committee on the judiciary, to whom was referred a resolution, exempting that portion of the territory of Texas lying north of 36 degrees 30 minutes north latitude, from the operation of the clauses in the Constitution relating to slavery, and prohibiting, within that portion of our limits, slavery or involuntary servitude, except for crimes; also, a resolution declaring that no provision of the Constitution should be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from the enjoyment of any of the immunities and privileges to which he is entitled, under the Constitution of the United States, have had the same under consideration, and have instructed me to report, and respectfully recommend for adoption, the following amendment of the 3d section of the schedule, as reported by the committee on General Provisions of the Constitution, viz: between the words "repugnant" and "to," in the 2d line, insert "to the Constitution of the United States, the joint resolution for annexing Texas to the United States, or."

This amendment, it is believed, will accomplish every beneficial purpose which could be obtained by the adoption of the resolutions referred for our consideration.

JOHN HEMPHILL,

Chairman.

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

On motion of Mr. Moore, the report of the committee on the judicial department was taken up.

In 12th section, Mr. Armstrong of J., moved to strike out the word "amount," and insert "value."

Carried.

Mr. Jewett offered the following amendment to the 12th section:

Strike out all down to "interest," inclusive, and insert "the district courts shall have original jurisdiction of all criminal cases, of all suits in behalf of the State, to recover penalties, forfeitures and escheats; and of all cases of divorce; and of all suits, complaints, and pleas, whatever, without regard to any distinction between law and equity, when the

matter in controversy shall be valued at, or amount to one hundred dollars, exclusive of interest."

Adopted; and the section as amended adopted.

Section 13th adopted.

In section 14th, Mr. Hemphill moved to fill first blank with "three years." Lost; and, on motion of Mr. Van Zandt, the blank was filled with "two years."

On motion of Mr. Van Zandt, the second blank was filled with "two years."

Mr. Davis offered the following substitute for the 14th section:

"The Legislature shall elect, by joint vote of both houses, one Attorney-General for the State, and one District Attorney for each Judicial District, who shall hold their offices for the term of two years; and should a vacancy occur, it shall be filled by the governor until the end of the next session of the Legislature; and their duties, salaries and perquisites shall be proscribed by law."

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

Ayes—Messrs. President, Armstrong of J., Baylor, Bagby, Brown, Cazneau, Clark, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Jewett, Kinney, Latimer of R. R., Lewis, Lipscomb, McNeill, Moore, Navarro, Runnels, Standefer and Young—26.

Noes—Messrs. Anderson, Armstrong of R., Bache, Brashear, Caldwell, Cunningham, Cuney, Evans, Everts, Forbes, Henderson, Hicks, Irion, Jones, Latimer of L., Love, Lumpkin, Lusk, Mayfield, McGowan, Parker, Rains, Scott, Smyth, Tarrant, Ochiltree, Van Zandt and White—28.

So the substitute was rejected.

Mr. Lewis offered the following amendment to the 14th section: "and there shall be elected by joint vote of both houses of the Legislature, one district attorney."

Mr. Anderson offered the following, as a substitute for Mr. Lewis's amendment: and there shall be a district attorney for each district, who shall be elected by the qualified voters thereof."

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

Ayes—Messrs. Anderson, Armstrong of R., Bache, Brashear, Brown, Caldwell, Clark, Cuney, Evans, Everts, Forbes, Hogg, Holland, Jewett, Latimer of L., Mayfield, McGowan, Parker, Rains, Standefer, Tarrant, Ochiltree, Van Zandt and Young—24.

Noes—Messrs. President, Armstrong of J., Bagby, Baylor, Cazneau,

Cunningham, Darnell, Davis, Gage, Hemphill, Henderson, Hicks, Horton, Hunter, Irion, Jones, Kinney, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McNeill, Miller, Moore, Navarro, Runnels, Scott, Smyth and White—31.

So the substitute was rejected.

Mr. Rusk offered the following, as a substitute for Mr. Lewis's amendment and the entire section, which was accepted by Mr. Lewis.

"There shall be appointed by the Governor, by and with the advice of two-thirds of the Senate, one attorney general, who shall discharge the duties of district attorney for the district in which the seat of government may be situated. There shall be elected by joint vote of both houses of the Legislature, a district attorney for each of the other districts, who shall hold their offices for two years, whose salaries and duties shall be prescribed by law."

Mr. Van Zandt moved to strike out that portion of the substitute which makes the attorney general the district attorney, in the district in which the seat of government is situated.

Mr. Anderson moved the previous question.

The question—shall the main question be now taken? was put and carried.

Mr. Lusk moved the re-consideration of the vote adopting the 14th section.

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

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Caldwell, Clark, Cazneau, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Irion, Jewett, Latimer of R. R., Lewis, Love, Lusk, Lipscomb, M'Neill, Miller, Parker, Runnels, Scott, Standefer, Tarrant and Ochiltree—30.

Noes—Messrs. Anderson, Bagby, Bache, Brashear, Brown, Cunningham, Cunev, Evans, Everts, Forbes, Henderson, Hicks, Jones, Kinney, Latimer of L., Lumpkin, Mayfield, Moore, Navarro, Rains, Smyth, Van Zandt, Wright and Young—24.

So the vote was reconsidered.

The ayes and noes being then called, on the adoption of the 14th section, stood thus:

Ayes—Messrs. Anderson, Bagby, Bache, Brown, Caldwell, Cunningham, Evans, Everts, Forbes, Henderson, Hicks, Jones, Latimer of L., Lumpkin, Lusk, Mayfield, Navarro, Parker, Rains, Smyth, Van Zandt and White—22.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Baylor,

Brashear, Cazneau, Clark, Cuney, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kidney, Latimer of R. R., Lewis, Love, Lipscomb, McNeill, Miller, Moore, Runnels, Scott, Standefer, Tarrant, Ochiltree and Young—32.

Lost, and section rejected by refusing to adopt.

Mr. Rusk offered as an additional section, to come in as the 44th section, the substitute offered by himself to Mr. Lewis's amendment, which had been cut off by the previous question.

Mr. Hemphill offered the following, as a substitute for the additional section offered by Mr. Rusk.

"The governor shall nominate and, by and with the advice and consent of the Senate, appoint an attorney general, who shall hold his office for two years; and there shall be elected, by joint vote of both houses of the Legislature, a district attorney for each judicial district, who shall hold their offices for two years; and the duties, salaries and perquisites of the Attorney General and District Attorneys, shall be prescribed by law." Adopted.

Mr. Rusk moved, that portion of the section which relates to attorney general be stricken out. Lost, and the section adopted.

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

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—quorum present.

The 15th, 16th and 17th sections of the Judiciary Report were adopted.

Mr. Evans offered the following, as an additional section, to come in after the 15th section:

"Justices of the peace shall have such civil and criminal jurisdiction, as shall be provided for by law."

Adopted.

Mr. Evans offered the following, as an additional section:

"The Legislature shall have power to vest in clerks of courts, authority to grant such orders, and do such acts as may be deemed necessary, for the furtherance of the administration of justice; and in all cases, the powers thus granted shall be specified and determined."

Rejected.

The report of the Committee on the Judicial department of the government was ordered to be engrossed.

On motion of Mr. Anderson, such reports as have been ordered to be engrossed, were referred to the Committee on Printing, with instructions to have printed a sufficient number for the use of the members.

On motion of Mr. Jewett, the 21st section of the General Provisions was made the special order of the day for to-morrow.

On motion of Mr. Bagby, the report on the Legislative department was taken up; and,

On motion of Mr. Young, it was laid on the table for the present.

The resolution offered by Mr. Ochiltree, on the 9th instant, providing for the appointment of a Committee to supervise the several reports, &c. was taken up and adopted.

The resolution offered by Mr. Davis, on the 11th instant, authorizing the appointment of a committee to prepare an ordinance for the change of the present form of government for a State government, was taken up, and laid on the table.

The resolution offered by Mr. Burroughs, on the 28th ult., to regulate the proceedings of the Convention, was taken up, and laid on the table.

On motion of Mr. Davis, the report on the Legislative Department was again taken up.

Mr. Everts offered the following as a substitute for the first section :

"Every free male person, who shall be a *bona fide* inhabitant of Texas, at the time of the adoption of this Constitution by the Congress of the United States, and who shall have attained the age of 21 years, (Indians, Africans, and the descendants of Africans, excepted) shall be deemed a qualified elector; and thereafter, all free male persons who shall be citizens of the United States, and who have resided in this State one year next preceding the day of election, and who shall have attained the age of twenty one years, (Indians, Africans and the descendants of Africans excepted) shall be entitled to vote in the county in which they shall reside; *provided* that no officer, soldier, or marine, in the service of the United States, shall be eligible to a vote."

Mr. Davis moved to amend, by restricting Indians from the privilege of voting until the 4th generation.

Rejected.

Mr. Davis then moved to restrict Indians and their descendants from voting, until the Legislature authorize it by enactment.

Mr. *Horton* said: If this amendment is adopted a great many individuals in this country will be placed in a situation by no means pleasant. I know a number of highly respectable people who have some Indian blood in their veins. They are intelligent men, and qualified to exercise all the privileges granted to them by the laws and the Constitution. I think if we go to defining the rights of individuals according to their blood, we shall require a tribunal to judge of these matters. The first section requires that a particular individual shall have resided so many months in the county or town, before he shall be entitled to the privileges of a qualified elector. That would exclude Indians, who are travelling about. Those who are so far civilized as to be engaged in agricultural pursuits, who are worthy citizens, pay taxes, and do military duty, should I think be entitled to vote as well as any.

Mr. *Davis's* amendment was lost.

Mr. *Everts* said: The original bill provides that every free white male person who shall be a citizen of the United States, or who is, at the time of the adoption of this Constitution, a citizen of the now Republic of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the county, city, or town in which he offers to vote (Indians not taxed, Africans and descendants of Africans excepted) shall be deemed a qualified elector. Now there are a great many persons, and will be at the time this Constitution is approved by the Congress of the United States, who will not be citizens of the Republic of Texas. All those persons who shall arrive in the country after this time, and do not take the oath of allegiance to the Republic of Texas, will be excluded by this provision of this bill. The substitute proposes that all persons who are *bona fide* inhabitants of Texas, at the time of the adoption of the Constitution, without regard to the time they have resided in the Republic, shall be deemed qualified electors. There will no doubt be a great number who ought really to be allowed to vote at the first election after the adoption of the Constitution by the Congress of the United States, who will have resided in the Republic six months, and at the same time have not taken the oath of allegiance. It seems to be a mere matter of form to require them to take the oath of allegiance to a government which they do not expect to support very long at any rate. This proposes extending the elective franchise to as great an extent as any one could wish, and it seems to me that we ought to go thus far. We ought to include all free persons who are *bona fide* inhabitants of Texas at the time of our adoption, whether citizens of the United States or citizens of Texas. The doctrine that a person must be a citizen of the United States before he can be qualified to vote at a State election, is apparently not true. A sovereign State has the right to permit any person to vote, whether a citizen of the United States or not; and it would be entirely competent for the Legislature of Texas to provide that all

inhabitants, no matter how long they have lived in the State, shall have the right to vote; and there is no power to gainsay that authority, notwithstanding the naturalization laws of the United States. Now, I am not by any means an advocate of permitting persons to vote who are not citizens of the United States, nor would I wish to place such a clause in this Constitution. As I recollect, it was a matter of very great complaint in the State of Illinois, in the year 1840, that great numbers of wild Irish, as they were called, were imported from Montreal and elsewhere, directly before the Presidential election came on, and in the fall, having resided in the State six months, they voted. To test the question, some of them were indicted; for they have a law there punishing those who attempt to vote without being entitled. The courts decided that they were entitled to vote. The State of Michigan has just such a clause in her Constitution, which has passed the ordeal and met the approval of the Congress of the United States. I allude to these authorities to show that it is competent for any State to declare the qualifications of an elector without regard to the naturalization laws of the United States. Those laws were passed for another and a different purpose from that of giving qualifications to an elector. The States have never conceded that right to the United States, and it has never been infringed by the Federal Government. This very question came up in the Senate of the United States in 1836, when the Michigan Constitution was before that body. It was discussed elaborately and the point was yielded, that the State had the right to declare the qualifications of electors without regard to the naturalization laws. Then the substitute goes only so far as to give to all free inhabitants who shall be here at the time of the adoption of this Constitution by the Congress of the United States, the rights of qualified electors. After that time I think a different rule should be adopted. I have seen the difficulties which have arisen in Michigan and Illinois, and I do not by any means advocate the introduction of foreigners into the country, either for the purpose of voting, or for that of making canals or railroads, or any thing else, without being first acquainted with our institutions, and taking the oath of allegiance. But in this particular instance, we might disfranchise a great number of persons in the Republic of Texas, who ought under the circumstances, as I think, to have a vote. My own opinion is this; that all persons who are inhabitants of Texas, by the terms of annexation, when that compact shall be completed, and annexation shall have taken place, will *ipso facto* become citizens of the United States; and that those persons now citizens of the Republic of Texas, who never were citizens of the United States, will not have to undergo the term of five years. I differ from some gentlemen upon that subject; but the question, whether my views are right or wrong, is not necessarily involved in this substitute.

Mr. Powers said: I heard with some degree of surprise the remarks which dropped from the lips of the gentleman last up, with regard to my

countrymen. I should like to know, sir, where he caught the "wild Irish," of whom he speaks. I am an Irishman myself; and I must say that I think these remarks of the gentleman out of place, uncalled for, and ungentlemanly.

Mr. *Everts* said: I meant no disrespect to the people of Ireland. I only made use of a term commonly applied in that section of the country to that portion of the Irish nation who come there for the purpose of laboring. I have perhaps as high a regard for the Irish character and the Irish people as any gentleman upon this floor. I meant to cast no imputation either upon the people to whom I alluded, or the race from which they sprang.

Mr. *Hemphill* said: I shall be opposed to making any person who may be here at the time of the adoption of the Constitution, though only a week, a citizen. I wish every such person to be here six months, and take the oath of allegiance. I see no sufficient reason for using the term "a citizen of the now Republic of Texas." I see no advantage in saying "a citizen of the United States and a citizen of Texas." I will offer a substitute for the substitute.

Mr. *Hemphill* offered the following, as a substitute for Mr. *Everts'* substitute for the 1st section:

"Every free male citizen [Indians not taxed, Africans and descendants of Africans excepted.] who, at the time being, hath attained the age of 21 years, and resided in the State six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or town in which he may actually reside at the time of the election, except at elections to fill the offices of Governor or Lieutenant Governor: *Provided*, that no officer, soldier, or marine, in the service of the United States, shall be eligible to a vote."

Mr. *Evans* said: I feel, perhaps, more interest in this question than in any other which has been discussed upon this floor. Three hundred citizens will be disfranchised by passing this provision, who understand as well as any when elections come on, whom to vote for. If you draw any distinction between old settlers and new settlers, you will perhaps do more harm than good. During the election, a great deal of injury was caused by the unjustifiable course which many old settlers took. A good many were willing to exclude these citizens, not only from the rights of voting, but from the right of serving in the Convention. A good deal of prejudice has existed upon this subject. There are in our county several hundred new comers, all good citizens too, and they will not have an opportunity of taking the oath of allegiance; for a great many take the ground that there is no officer of the Republic of Texas authorized to administer the oath to them; they look upon this govern-

ment as defunct. Devoted as they are to annexation, they will not reconcile their feelings very soon to being disfranchised.

Mr. Jones moved the previous question.

The question—shall the main question be now taken? was put and lost, by ayes and noes as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bagby, Cunningham, Gage, Henderson, Hicks, Horton, Jones, Latimer of L., Latimer of R. R., Lumpkin, Miller, Navarro, Power, Rains, Tarrant, Ochiltree, Van Zandt, and Young—20.

Noes—Messrs. President, Armstrong of J., Bache, Brown, Caldwell, Clark, Cuney, Durnell, Davis, Evans, Everts, Forbes, Hemphill, Hogg, Holland, Hueter, Irion, Jewett, Lewis, Love, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Moore, Parker, Scott, Smyth and Standefer—30

Lost.

The question on Mr. Hemphill's substitute, was taken and carried.

The question being the adoption of the section as substituted.

Mr. *Mayfield* said: It appears to be defective. I do not hold the doctrine that by the mere operation of the change of government the citizens of Texas will become citizens of the United States, unless there shall be some declaration to that effect. In my opinion, we should make some provision for those here who are absolutely *bona fide* citizens of the country at the time of the adoption of the Constitution, from whatever class or country they may have come. If they have been induced to emigrate here, if they have sought this country as an asylum, and have adopted it as their home and abiding place, I hold that we should place something in this Constitution granting them all the rights and privileges of citizens. I do not think myself that by the mere operation of the change, they will thereby become citizens of the State, and also of the United States.

Mr. *Hemphill* said: We go into the Union as a State; and we are in the same situation as that of each of the original States when they formed the confederacy and adopted the Constitution. We go in as any one of those States went in them. We go in as North Carolina, for example, went in. She remained independent for some months; and it was necessary by special laws to extend the tariff to that State.

Mr. *Runnels* said: I shall vote against the substitute. In my opinion, all persons who are citizens of the Republic at the time of the adoption of the Constitution, should be qualified electors. I am satisfied my-

self too, that all those who are citizens of Texas at that time, will become by the change citizens of the United States. But, sir, the substitute will strike at the root of the naturalization laws of the United States, after we shall have become a portion of the United States. It does seem to me that, like all the other States, the naturalization laws should be enforced in this State. This is an important question. If this is fixed in the Constitution, it is to remain permanent. I shall vote against the adoption of the amendment as a section, and call for the ayes and noes.

Mr. *Hemphill* said: I will say, with regard to its striking at the roots of the naturalization laws of the United States, that I took it from the Constitution of Kentucky.

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

Ayes—Messrs. Bache, Brashear, Cunningham, Cuney, Evans, Forbes, Hemphill, Love, Lusk, McNeil; Navarro, Power and Ochiltree—13.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Caldwell, Cazneau, Clark, Darnell, Davis, Everts, Gage, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Lumpkin, Lipscomb, Mayfield, McGowan, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, VanZandt, White, Wright and Young—42.

Lost and section rejected.

On motion of Mr. Moore, the word "now," before "Republic," was stricken out.

Mr. *Hunter* moved to strike out the word "citizen," in 3d line, and insert "inhabitant." He thought it would cover the entire ground gentlemen had been sometime contending for.

Lost.

Mr. Brown moved to insert, after the word "Constitution," the words "by the Congress of the United States"

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

Ayes—Messrs. President, Armstrong of R., Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Davis, Evans, Forbes, Gage, Hemphill, Hogg, Holland, Irion, Kinney, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Parker, Power, Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, White, and Young—40.

Noes—Messrs. Armstrong of J., Bagby, Baylor, Darnell, Everts, Hicks, Hunter, Jewett, Jones, Lewis, Mayfield and Rains—12.

Carried.

Mr. Scott offered the following amendment to 1st section :

Insert, after the word "election," in 11th line, "any such qualified elector who may happen to be in any county, city, or town, other than that of his residence at the time of an election, or who shall have removed to any county, city, or town, within six months preceding the election, from any county, city, or town, in which he would have been a qualified elector, had he not so removed, may vote for any state or district officer, or member of Congress, for whom he could have voted in the county of his residence; or the county, city, or town, from which he may have so removed."

Adopted.

Mr. Jewett offered the following amendment, to come in after the word "elector," in the 11th line, and after Mr. Scott's amendment :

"And all free male persons, with the exceptions above stated, who are, *bona fide*, inhabitants of Texas at the time of the adoption of this Constitution by the people, or the acceptance thereof by the Congress of the United States of America, shall be entitled to, and enjoy, all the rights and immunities of citizens of the State."

Mr. Forbes moved to refer the section and amendments to the judiciary committee. Lost.

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

Tuesday, Aug. 12th, 1845.

Half past 8 o'clock, A. M.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Hemphill, chairman of the judiciary committee, made the following report :

COMMITTEE ROOM, Aug. 11th, 1845.

To the Hon. THOS. J. RUSK,

President of the Convention :

The committee on the judicial department of the government, to whom was referred the 18th section of the article on the general provisions of the constitution, have had the same under consideration, and have instructed me to report the following substitute for the said section, viz :