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The section was then adopted.

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

Lost.

The 1st section of the report, together with the substitute reported by the select committee, Mr. Brown chairman, was taken up.

Mr. Love moved to lay the section and substitute on the table.

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

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Friday, Aug. 15th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Cunningham filed the following protest to vote given heretofore given, adopting the 31st section of the legislative department.

Austin, August 14, 1845.

The undersigned having voted against the 31st section of the Constitution relating to the legislative department of the government, establishing the number of representatives in the first legislature of Texas, and apportioning the same among the respective counties, begs leave to respectfully to protest against the adoption of the said section for the following reasons:

1st. The large number of the representatives will necessarily subject the people of the western portion of the country—already impoverished, by their patriotic efforts to support and maintain the independence of the country, to an onerous tax, from which they ought, if possible, to be relieved.

2d. The apportionment of the representatives among the respective counties is unjust and injurious to the rights and interests of the people of the western portion of the state, inasmuch as it deprives them of their due weight in the legislation of the state, by changing the constitutional apportionment in the legislature of the country.

This infringement of a right, so dear to freemen, is justified solely on the ground of a partial depopulation of that country by the ravages of a desolating war.

The undersigned can recognize no principle of justice, patriotism or humanity, which would warrant this body in depriving any portion of the people of this country, of this inestimable right by reason of the vicissitudes of fortune, over which they could exercise no control. Especially when it is recollected that the inhabitants of this portion of the country have, for the last eight years, borne all the burthens of a war, almost unaided by their government. That they have paid a tribute for the support and maintainance of that government, in blood, treasure and personal service, which, in proportion to their numbers and means, is unprecedented in the history of modern republics.

That the depopulation of their country has been caused by a sacrifice of life in defence of their country, and by reason of a direliction of duty, neglect or inability of the government to protect them in the enjoyment of their homes. That the widows, orphans and heirs of those who have fallen in battle, and been driven from their homes, claim the same interest in the soil which was owned by their husbands, fathers and friends, now the undersigned believes, that whenever they have wandered, or been driven, their voice should be heard in the legislature of the state, and that voice should be for the protection of the local interests of the homes hallowed to them by the blood of their kinsmen.

The undersigned, therefore, believes, that the old constitutional apportionment should be preserved until full protection is given to the western frontier, and ample time for those driven from their homes, to return to them—actuated, however, by a liberal spirit of concession, he was willing, by way of compromise, to adopt the provision reported by the select committee through its chairman; he would, however, consider himself recreant to the interests of his constituents, and of the people of western Texas, were he to depart further from the rule which a sense of justice dictates to him.

A. S. GUNNINGHAM.

Mr. Horton moved a reconsideration of the vote given yesterday, adopting the 28th section of the legislative department.

Mr. Standifer said: he wished the reconsideration for the purpose of striking out the two first lines, which say, that preachers, by their profession, are dedicated to God, and have the care of souls. He wished gentlemen to recollect what we say. Do we mean, said he, the immortal part of man? If so, we should say what we think. I deny that any

mortal man has any thing to do with that immortal part. Preachers are like other men. All are of like passions; all like ease, honor and money, and none can make one hair white or black.

The motion was lost.

The select committee, to whom was referred the resolution enquiring into the expediency of dividing Texas into two congressional districts, (Mr. Everts chairman,) made the following report:

COMMITTEE ROOM, Aug. 15th, 1845.

To the Hon. THOS. J. RUSK,

*President of the Convention:*

The committee to whom was referred the resolution of the convention to enquire into the propriety of dividing Texas into two congressional districts, agreeably to the act of Congress of the United States, of 1842, upon that subject, in order to elect two representatives for the State of Texas, until the year 1853, beg leave to make the following report:

That the act of Congress above alluded to, does, amongst other things, require, that each state shall be laid off into as many congressional districts, as the same may be entitled to representatives in the Congress of the United States; and your committee believing, and being fully persuaded that Texas, under the ratio fixed by said act of congress, is entitled to two representatives in the Congress of the U. States, until an apportionment be made under the census of 1850, have proceeded to divide Texas into two congressional districts, in such manner as to give as nearly as possible, an equal number of qualified voters to each district, and in conformity thereto have instructed me to report the following

#### ORDINANCE:

It is declared and ordained by the Deputies in Convention assembled, that all the territory comprised within the limits of the following named counties, shall comprise the first congressional district of the State of Texas until after the next appointment, and shall elect one representative to the Congress of the U. States, to wit:

The counties of Fannin, Lamar, Red River, Bowie, Harrison, Shelby, Jefferson, Jasper, Rusk; Sabine, San Augustine, Liberty, Houston, Nacogdoches and Galveston.

All the territory comprised within the limits of the following named counties, shall compose the second congressional district of the State of

Texas, and shall elect one representative to the Congress of the United States, to wit:

Brazoria, Fort Bend, Matagorda, Jackson, Victoria, Austin, Colorado, Fayette, Gonzales, Travis, Bastrop, Washington, Bexar, Goliad, Refugio, San Patricio, Milam, Brazos, Robertson, Montgomery and Harris.

All of which is respectfully submitted.

G. A. EVERTS,

Chairman.

Which was laid on the table to come up among the Orders of the Day.

Mr. Bache offered the following resolution:

*Resolved*, That a committee of \_\_\_\_\_ be appointed to wait upon the President of the Republic of Texas, to consult with him concerning the transfer of the government, by the Convention, from an independent republic, to a Republican State government.

Which was laid on the table for one day, according to the rule.

On motion of Mr. Gage; the Convention took up the

### ORDERS OF THE DAY.

The first section and substitute of the select committee on the legislative department, being first in order,

Mr. Love offered the following as a substitute for the substitute of the select committee, (Mr. Brown chairman:)

"Every free male person who has attained the age of twenty-one years, and shall be a citizen of Texas at the time of the adoption of this Constitution by the Congress of the United States, (Indians not taxed, Africans and descendants of Africans, excepted,) shall be deemed a qualified elector, and be entitled to vote in the county, city, town or district where he may actually reside.

Those who may not be citizens of Texas at the time of the adoption of this Constitution by the United States, when they have attained the age of twenty-one years, and shall have resided in the state twelve months, and six months in the county, city, town or district where he offers to vote, shall be deemed a qualified elector. Those who have resided two years in the state, and three months in the county, shall be entitled to

vote in any county, city, town or district where he may actually reside. After the acceptance of this Constitution by the U. States, the Legislature shall provide by law the manner in which foreigners arriving in the state, after its adoption as one of the U. States, and who may not be naturalized under the laws of the United States, shall exercise the right of suffrage in all elections for state officers. Provided, nevertheless, that the right of suffrage shall not be exercised by any non-commissioned officer, soldier, seaman, or marine in the service of the U. States."

Messrs. Everts and Wright made some remarks in opposition to the substitute proposed, and Messrs. Love and Lusk in its favor.

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

Ayes—Messrs. President, Armstrong of R., Bagby, Burroughs, Cunningham, Cuney, Darnell, Davis, Gage, Henderson; Hogg, Holland, Irion, Jewett, Jones, Latimer of L., Lewis, Love, Lusk, M'Neil, Miller, Parker, Power, Rains, Scott, Smyth, Staudifer, Tarrant, Ochiltree and Young—30.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brown, Caldwell, Clark; Evans, Everts, Forbes, Hicks, Horton, Hunter, Latimer of R. R., Lumpkin, Mayfield, McGowan, Moore, Navarro, Van Zandt, White and Wright—22.

So the substitute was adopted.

Mr. Mayfield offered the following substitute for the substitute of Mr. Love :

"Every free male person of the age of twenty-one years, who shall be a citizen of the U. States; or who at the time of the adoption of this Constitution by the people of Texas, shall be a *bona fide* inhabitant of Texas, or at the final action of the Congress of the U. States thereon, and shall have resided the last six months in the county, city, town or district in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified elector, and entitled to enjoy all the rights, immunities and privileges of citizens of this state, under such disabilities as are otherwise provided for in this Constitution, and the Constitution of the U. States."

Mr. Rusk moved to strike out the clause in Mr. Love's substitute, in relation to the legislature providing by law for those who may not be naturalized under the laws of the U. States.

Which motion prevailed, and the clause was stricken out.

The ayes and noes were then called on the adoption of Mr. Mayfield's substitute, and were as follows :

**Ayes**—Messrs. Anderson, Bache, Caldwell, Cazneau, Evans, Everts, Horton, Howard, Hunter, Lipscomb, Mayfield, Navarro and Power—13.

**Noes**—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Brashear, Brown, Burroughs, Clark, Cunningham, Darnell, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, McGowan, McNeil, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Tarrant, Standefer, Ochiltree, Van Zandt, White, Wright and Young—42.

So the substitute was rejected.

Mr. Van Zandt moved the following substitute for Mr. Love's substitute:

Every free male person of the age of 21 years (Indians not taxed, Africans and descendants of Africans excepted) who is an actual resident and inhabitant of Texas, at the time of the approval of this Constitution by the Congress of the U. States, or who, after the adoption of this constitution, shall be a citizen of the United States, and shall have resided six months in the county or district where he may offer his vote, shall be deemed a qualified elector and entitled to vote for members of the legislature and other officers of the district or county in which he may reside; provided no officer, soldier, seaman or marine, in the army or navy of the U. States, shall be entitled to vote.

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

**Ayes**—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brown, Clark, Evans, Everts, Forbes, Hemphill, Horton, Howard, Hunter, Lipscomb, Navarro, Power, and Van Zandt—17.

**Noes**—Messrs. President, Armstrong of R., Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cunningham, Darnell, Henderson, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Mayfield, McGowan, McNeil, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White, Wright and Young—37.

So the substitute of Mr. Van Zandt was rejected.

Mr. Gage moved to strike out 'non-commissioned,' before 'officer,' in Mr. Love's substitute.

Lost.

Upon which the ayes and noes were called on the motion.

The Chair decided that the ayes and noes could not be called for after the decision of the Chair.

Mr. Gage appealed from the decision of the Chair, and upon the question being put, the Convention sustained the decision of the Chair.

Mr. Van Zandt moved to strike out 'non commissioned officer,' and insert 'officer.'

A division of the question was called for, and the question upon striking out was put.

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

**Ayes**—Messrs. President, Anderson, Armstrong of J., Baylor, Bagby, Burroughs, Clark, Cunningham, Everts, Forbes, Gage, Hogg, Horton, Hunter, Irion, Latimer of R. R., Lusk, McNeill, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Wright—27.

**Noes**—Messrs. Armstrong of R., Bache, Brown, Caldwell, Cazneau, Hemphill, Henderson, Hicks, Jewett, Jones, Lewis, Love, Lumpkin, Mayfield, McGowan, Miller, Moore, Navarro, Parker, Power, Rains and Young—22.

So the motion prevailed, and the words were stricken out.

On motion of Mr. Anderson, the Convention adjourned until four o'clock, P. M.

4 o'clock, P. M.

Convention met pursuant to adjournment:

Mr. Love's substitute being under consideration—question before the Convention (non commissioned officers being stricken out,) was Mr. Van Zandt's motion to fill the blank with 'officers.'

Which motion prevailed.

Mr. Love moved to strike out the whole proviso in the substitute offered by himself.

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

**Ayes**—Messrs. Brashear, Cunningham, Evans, Hunter, Jewett, Love, Lusk and Miller—8.

**Noes**—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Cazneau, Clark, Cuney, Darnell, Davis, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Irion, Latimer of L., Latimer of R. R., Lewis, Lipscomb, McGowan, McNeill, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Van Zandt, Ochiltree, White and Wright—38.

So the motion was lost.

Mr. Van Zandt moved to strike out 'service' in the substitute, and insert 'army and navy.'

Which motion prevailed.

Mr. Rusk offered the following as a substitute for the substitute offered by Mr. Love:

"Every free male person of the age of twenty-one years and upwards, (Indians not taxed, Africans and descendants of Africans excepted,) who shall be a citizen of the U. States, and shall have resided in this state one year previous to an election, and in the county or district six months, shall be a qualified elector. This provision, however, shall not apply to the first elections under this constitution; but all free male persons, (Indians not taxed, Africans and descendants of Africans excepted,) who may reside in Texas at the date of the adoption of this constitution, and who shall be 21 years of age, shall be entitled to vote in the first election: Provided that no officer, soldier, seaman or marine, in the land or naval forces of the United States, shall be entitled to vote for any county, district or state officer."

Mr. Love said: I do not exactly understand the meaning of the substitute offered by the gentleman from Nacogdoches. It is not a matter of much importance to me what is adopted: but I understand the meaning of the section to be this: that a person who is a citizen of the United States, and shall have resided in the state one year, may vote at the next election, but that one who is not a citizen of the U. States, cannot vote at the next election. I wish the rule to be adopted, that any person who may be in Texas at the time of the acceptance of our Constitution by the U. States, shall have the right to vote. I should like to see Europeans placed in precisely the same situation in this respect, as citizens of the U. States. The latter are foreigners to us, just as much as the Englishman, the Russian or the Dutchman—there is no difference. I think it right that all persons who shall be actually in Texas at the time of the adoption of this constitution, should be placed upon the same footing. I may, however, be mistaken, with regard to the operation of the section.

Mr. Baylor said: I think the proposition easy to be understood, and I cannot myself see any great objection to it. The first section embraces the class of cases arising after the adoption of the Constitution, and our re-organization as a State.

In order to avoid every difficulty at the first election, the proposition is made, as I understand it, that every one twenty-one years of age, residing here at that time, no matter from what country, shall have the

'right to vote at the first election'; but that in after-times, none but citizens of the United States shall have the right to vote, and that they must undergo a residence of twelve months. This, it seems to me, leaves things exactly where they should be; it leaves it with the General Government to naturalize our citizens in the same way as every where else.

Mr. *Rusk* said: It seems to me that the substitute explains itself. [Substitute read.] It is necessary, or seems to be thought necessary, to define the qualifications of electors. It has been contended that the State has the right to qualify such electors as she may see proper; but the question arises, whether, in qualifying our electors, we had not better pay some little attention to the naturalization laws of the United States. If I understand the section myself, it provides that all persons who shall be residents of Texas on the day of the adoption of this Constitution shall be entitled to vote at the first election. I do not think there is any necessity of explanation so far as that goes. Then, at subsequent elections, it requires individuals to be citizens of the United States, and residents in Texas twelve months, and in the county or district six months previous to the election. Now, this seems to me not only a plain, but a necessary provision. It will be recollected that there is now a high state of excitement in the United States upon the subject of the naturalization laws. I am the last man to say that foreigners should be excluded from any privileges or rights; but at the same time I am not willing, in order to show an excess of zeal upon the subject, to come into conflict with the Constitution and laws of the United States. According to our present Constitution and laws, individuals who desire to acquire citizenship, have nothing to do but to come here, reside six months, and take the oath of allegiance. If an individual, then, previously to the adoption of our Constitution, comes here with the *bona fide* purpose of settling in the country, and commences a compliance with the provisions of our laws, which are held out to him as necessary, and resides here six weeks, or six months, and before he can take the oath of allegiance to the government, we have destroyed that government by our own act, we cannot then turn round, and taking advantage of our own act, make him an alien. His rights having begun to vest at the moment of his settling here, if we do an act in our governmental capacity which puts it out of his power to comply with the requisitions of the Constitution, he becomes to all intents and purposes a citizen; and being a citizen of Texas, I contend that when we go into the United States, he must become at once a citizen of the United States. Then, by adopting this section, we shall be doing no injury to any body. If, however, we strike out the proposed provision, and require a residence of twelve months only, without any citizenship whatever, and without any oath to support the Constitution of Texas or the United States, could not a German prince who had resided one year in Texas, vote, without being a citizen of the United States, and whilst owing allegiance to a foreign

government? If so, I should be unwilling to adopt such a principle. It seems to me that this provision will interfere with the rights of no one. It extends to many individuals a privilege, in fact, in the first election, which they would not now enjoy under the Constitution of the Republic; because if they have been here but three days previous to that election, they will be entitled to vote. If this is illiberality, I never understood the term. Then, sir, the other provision seems necessary. This Constitution of course will have to go through a different ordeal; it will be examined with particular care. And in view of our large colonization contracts, and the agitation upon the subject of the threatened influence of foreign population, when the United States sees that we have paid no attention to her Constitution and naturalization laws, and have inserted here an article of this kind, which we cannot alter, except by a very tedious process, it seems to me it would have a bad appearance. No one will be injured by the provision as it now stands; and in seeking to please a few individuals, we might prejudice the interests of the entire mass.

Mr. Van Zandt said: I believe that the position which I occupy upon this subject is different from that of many of the members of this body. It is broadly asserted here that every individual in the Republic, who is a citizen at the time of the adoption of our Constitution of the United States, will then become at once a citizen of the United States. I have listened to the various arguments upon the subject, and have yet to see the first line of authority which goes to establish that principle. I have great confidence in the constitutional opinions of the gentleman from Nacogdoches, great confidence in his legal abilities, and I had hoped that in the course of discussion he would have given us some reason or stated some authority for his assertion. The treaty made with France, in 1803, provided that those who were citizens of Louisiana, or subjects of that government, should at the "earliest day practicable" be admitted to all the rights of citizens of the United States, and should, "in the mean time" be protected in person and property. Now, I wish to know what is meant by this term, "mean time"? It is contended by gentlemen, that by the treaty for the cession of Louisiana, *ipso facto* the citizens of that territory were made citizens of the United States. I say, sir, that treaty can bear no such construction; but evidently contemplates a period between the admission of the country into the Union and the admission of the inhabitants to the rights of citizenship. I will give another reason why they were not so admitted by that treaty. The Constitution of the United States says that Congress shall have the power to pass uniform rules upon the subject of naturalization. I would ask the Convention to bear that in mind. In a case reported in 3d Dallas, the court decided that the right to pass naturalization laws is exclusively vested in the Congress of the United States. Now, I would ask if the treaties for the acquisition of Louisiana and Florida were made by

Congress. They were made, sir, by the President and Senate. I would ask if a treaty which should attempt to make those people citizens, would not have been unconstitutional? I say that the treaties of 1819 and 1803 did not make the inhabitants of those territories citizens of the United States. And now, sir, does annexation have that effect? Is there any thing in the Joint Resolutions to induce such a belief? Can you make an inhabitant a citizen by implication? I hold that naturalization is to some extent in the nature of a contract between the government and the party, who must himself consent. How, then, do you propose to ask the consent of those who would not otherwise be citizens, to this contract of naturalization? Could you try an individual in this situation, an European, for instance, for treason? He would ask you to point him to the oath of allegiance where he had sworn to support the Constitution of the United States. True, he emigrated to Texas, but with no view of becoming a citizen of the United States. Can you force him against his will to become a citizen of any country out of which he was born? I present these difficulties; I am not satisfied about them, and I hope that gentlemen may be able to obviate them. In going into the United States, we have two or three different classes of citizens. The native born citizen, going back, regains his citizenship. Those of another class, born in Texas, by the extension of the laws of the United States over the country of their birth place, are at once considered citizens of the United States. There is another class, who have emigrated from other foreign countries, and have become naturalized citizens of Texas. With regard to these there is a question. The case of North Carolina has been referred to. It was said, that when North Carolina accepted the Constitution, her citizens thereby became citizens of the United States. This is true, and why? North Carolina was a party to the compact, one of the original parties. But suppose North Carolina had been a foreign government, the case, then, I think, would have been very different. There is another class, of foreigners coming in, in whose case the six months will not perhaps have expired before we are admitted into the Union, and they will not be entitled to citizenship. The gentleman tells you they may vote at one election. But I ask if they are not excluded from the second? And what is the policy which admits them to the first, and excludes them from the second and all subsequent elections until they shall have resided five years in the United States, and taken the oath of allegiance? It seems to me, sir, that if gentlemen will take into view the naturalization laws, they must see that no act of this Convention can make a man a citizen of the United States.

Mr. *Lipscomb* said: As this is a question upon which it seems lawyers differ as to the constitutional effect of annexation, I hope the Convention will not deem it intrusive in me, if I occupy their attention but a few moments. I do not intend to make a speech, but simply to ex-

press my opinion with regard to the legal effect of annexation. In the first place, I will take up the position of my friend from Harrison. He says, that if annexation made citizens of the United States all who should be citizens of Texas at the time of the adoption of our Constitution, it would be violating a decision of the Supreme Court of the United States; that if a naturalization law were to have this effect, it would be repugnant to the decision of the Supreme Court, declaring that the right to pass laws upon that subject is vested in Congress alone. Now, I would ask him to show me any part of this Constitution, any provision in it, which directs the mode of naturalization? Admitting to the full extent the position he has assumed, let me ask him, with whom did the Congress of the United States propose to act? With the people of Texas, sir. The Congress of the United States proposed that if the people of Texas should accept the terms of their Joint Resolutions, they should go into the Union as one of the independent States of the Union. Did they make any reservation? Did they extend that proposition only to such as were native born citizens of the United States? No, sir. For aught that appeared, the government of the United States was treating with those who had never been citizens of the United States, treating with the people of Texas. And there is nothing in the Constitution of the United States which would prohibit Congress from naturalizing in this way, admitting that Congress alone can naturalize. I consider, Mr. President, the Resolutions and terms upon which we go into the Union to be strictly a contract. They have every ingredient of a contract; the parties to which are the United States on the one part, and the people of Texas on the other part; the subject matter is the annexation of this country to the United States. Here is every ingredient of a contract; and when we accept the terms and go into the Union, I have no doubt at all that every citizen of Texas, by the very fact of going into the Union will become a citizen of the United States. The gentleman has challenged us to produce authorities; he may well do so here, in this wilderness, where there are no books. I can only, on the present occasion, refer to one case, that of a man born in Havana, who settled in Louisiana. Antonio settled in Louisiana at an early date, and moved to Mobile before Louisiana was admitted into the Union as a State. In Mobile he was offered as a juror, and challenged on the ground that he was not a citizen. The challenge was over-ruled, and the case was taken to the Supreme Court of Alabama, and there over-ruled, on the ground that no act on his part was necessary to constitute him a citizen, as the mere transfer of the government had made him such. If the Louisiana Reports were here, I could find this principle pervading the whole, with regard to citizens of Louisiana. Where is the instance in which one of these old inhabitants has been required to take the oath of allegiance? Many of them have been senators; many have held high offices; and all and every one of them were received as citizens, from the mere fact of their having been citizens of Louisiana at the time of

the cession. It has been so, too, in Florida. No one of the citizens of Florida at the time of the treaty, has had his citizenship questioned; but they have been entitled to all the rights, and have exercised all the privileges of citizens of the United States. But I do consider our case as a much stronger one; because it is a contract which the United States held out to the people of Texas, and which that people had to approve of. There is one difficulty which occurs to me in the proposed substitute. There will be a description of persons voting at the first election who are not citizens of Texas, not having resided long enough in the country. I for one am willing to allow that class of persons to vote at all State elections throughout all time, and would propose an amendment embracing that object. Still, I am not clearly satisfied that those who have been in the country so short a time should not be required to undergo some state of probation. As a large number of this class might come in, however, I am willing to vote for this amendment. If I could see the difficulty which the gentleman from Harrison imagines, I would vote against the substitute, every part of it. For I would not for a moment say that the gentlemen from Bexar and Refugio should take the oath of allegiance before they could vote. But I believe that no such difficulty exists. I believe that by the act of transfer they do become citizens to all intents and purposes. With regard to the treaties in relation to the acquisition of Louisiana and Florida, if the gentleman would look farther, he would see the intention to be that the inhabitants were to become citizens at the time of admission, but under a territorial government, and as soon as convenient to be admitted into the Union as an independent State.

Mr. Rusk said: The broad position is laid down, that the citizens of Texas, when we go into the Union under the Joint Resolutions, are not citizens of the United States, unless they were so originally.

Mr. Van Zandt said: The gentleman makes it a little too broad. I stated that natives of the country, I was satisfied, would be citizens of the United States.

Mr. Rusk continued: Then, sir, it seems to me, so far as the United States government is concerned, that a man born in Texas while a foreign country, is just as much a foreigner as a man born in the Emerald Isle. The gentleman's position, whether he will or not, carries him precisely to that point. The United States are now about adopting Texas as a State of the Union, with all the guaranties of a State. The Resolutions propose that. Then if we come in as a State, is not every citizen here a citizen of the United States at once? Let a man have been born upon the soil of Texas, in Ireland, England, or Russia, if he is a citizen of Texas, I think the position is unassailable, that the moment the compact under the Resolutions is complete, he then becomes

a citizen of the United States. That government is here treating with us as a separate, distinct and sovereign government. The argument of the gentleman from Harrison leads him into another dilemma. The very act of annexation, according to his view of the subject, will make a large class of persons aliens in the very country where they are now citizens. And if they are aliens, they cannot hold land, in fact they have no rights at all. Now, sir, to maintain a position so absurd as this, it seems to me the authority should come from the other side. The United States is not treating with us as individuals, but as a community, and when we go in, we go in as a community; and all the rights which we have as citizens, we shall enjoy when we go into the Union, with the single difference of being in a *State*.

Mr. *Van Zandt* said: I wish to say a few words in answer to one argument. I ask the gentleman where does he go to find native born citizens of the Republic of Texas? Where were they born? Perhaps in the Spanish dominions, and they have lived perhaps under the Mexican government, and we now find them citizens of the Republic of Texas. Suppose Texas admitted into the Union as State, and the citizenship of the gentleman from Bexar to be called in question. I ask the gentleman from Nacogdoches, what he would say if called upon to testify whether he was a native citizen of the United States? He would say, perhaps, that he was born in San Antonio. Where is San Antonio? It is in one of the western States of the United States; he is therefore a native of the United States. A man may be, perhaps, in some cases, an alien in his native land. Two years ago, I felt myself considered an alien in my native land, but I should consider the gentleman from San Antonio as occupying a different position; he is a citizen of his native land.

Mr. *Henderson* said: I entertain a different opinion upon this subject from that of the gentleman from Harrison. I hold that every man who is a citizen of Texas at the time of the adoption of this Constitution, will be thereby made a citizen of the United States. If this were not the fact, this state might be placing itself in a most extraordinary position. I would ask the gentleman from Harrison what position this country would be in, if it were made up entirely of natives of Ireland, and the United States should pass such resolutions as they have passed, for our admission as a separate state, and we should accept the terms and be admitted into the Union? What would be our position, if there was not a single man in the country who was a citizen of the U. States? Then according to his position we should have a whole community forming a portion of the Federal Union, exercising all the privileges of a sovereign state, or at least acting in concurrence with the other states, and yet this portion of the community would be aliens to the country. Does not this strike the mind at once as proving the fallacy of the gen-

the gentleman's opinion? I cannot myself see the slightest distinction between the gentleman from Bexar and the gentleman from Refugio, when we are admitted into the United States. I say, Mr. President, that, according to my understanding of the matter, both of those gentlemen will be as much citizens of the United States as you or I. I take it too, sir, that this position does not conflict with the naturalization laws of the United States. For if Congress has the right to pass naturalization laws, and has the right to admit new States, cannot that body, in admitting a new State, pass a naturalization law extending over that whole country? When we are admitted into the Union, we must be admitted to all the privileges which the citizens of other states enjoy. If there is a foreigner here, he is not only an alien to the United States, but an alien to Texas.

When we look at the debates which took place in the Convention that formed the Constitution, we shall find this very question there discussed. It was proposed to make a distinction between the admission of states formed out of territory then included within the limits of the confederacy and that of those without those limits; it was proposed that the act of a bare majority of the members of Congress should be sufficient in the former case, and that the consent of two thirds or three-fourths should be required in the latter. But this proposition was voted down, with a view to the admission of Canada into the Union. Now I would ask how the gentleman would reconcile the proposition which the Convention would have occupied in the event of the admission of Canada with his own? Perhaps not one in a hundred thousand of the people were natives of the United States. Would he say that this country should be admitted as a state, and its people to the exercise of all the privileges of a state, except that of being called citizens of the U. States? How could this be? And in what a position would this state place itself, if the doctrine of the gentleman from Harrison were correct?

As I take it, this is a contract between the people of the U. States on the one part, and the people of Texas on the other. And we stand precisely in the position occupied by North Carolina or any other State of the Union before the confederacy was formed. It will be recollected that North Carolina came in some time after the adoption of the present Constitution. There was a confederacy in existence, of which North Carolina formed no portion. Will the gentleman say that the people of that State were aliens? Will he say that they were not admitted upon the same terms upon which we are admitted into the Union? For though we propose to go in at this late period, I can see no difference as regards the terms of the compact and political privileges between the admission of North Carolina then, and that of Texas now. His doctrine, if correct, would exclude a large number of the citizens of Texas from the enjoyment of the privileges which they now possess: it would make them aliens to the world, where they have renounced their allegiance to other countries, and have become citizens

of Texas. How would this result accord with natural reason and natural right? How the gentleman arrives at the distinction between the natives of Ireland, here citizens of Texas, and the natives of Texas, I am at a loss to comprehend. Are they not all, sir, equally aliens to the United States?

So far as regards the treaty for the acquisition of Louisiana, I can see no authority there for the gentleman's position; I can see nothing in contradiction to the views which I entertain, in looking over the provisions of that treaty. The clause to which he referred, if I recollect it right, is evidently intended to guaranty to the people of Louisiana the right of admission into the Union, not as citizens, but as a political body, at a future day, as soon as convenient, to be admitted to the enjoyment of all the privileges of the citizens of other States. It does not say that at a future day, they should be *made citizens of the United States*. This case has no application here. We are not admitted as a territory, but as a State. I cannot see any reason to doubt that every man who is a citizen of Texas on the day of ratification will become a citizen of the United States.

On motion of Mr. Rusk, Messrs. Henderson and Baylor were appointed as a committee to wait on the Hon. E. Allen, Secretary of State, and invite him within the bar of the Convention.

The question was then taken by ayes and noes on the adoption of the substitute offered by Mr. Rusk, which were as follows:

**Ayes**—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Henderson, Hogg, Horton, Jewett, Jones, Lewis, Lumpkin, Lipscomb, Moore, Navarro, Parker Rains, Runnels, Smyth, Standefer, Ochiltree, White and Young—28.

**Noes**—Messrs. Bagby, Bache, Brashear, Brown, Burroughs, Cunningham, Cuney, Forbes, Hemphill, Hicks, Hunter, Irion, Latimer of L., Latimer of R. R., Love, Lusk, Mayfield, McGowan, McNeil, Miller, Power, Scott, Tarrant, Van Zandt and Wright—25.

So the substitute was adopted.

Mr. Mayfield offered an amendment, to come in after "qualified electors:" "shall be entitled to and enjoy all the rights, immunities and privileges of citizens of this State, under such disabilities as are provided for in the Constitution of this State and that of the United States.

Mr. Brown said: I am aware that the house must be very weary, and in all the debate which has taken place, I have taken but very little part; but my views upon this subject are so totally dissimilar to those which I have heard expressed by any one person, that I will crave the indulgence of the Convention to submit them. I have not a doubt that

every person in the Republic who is a citizen according to our Constitution and laws, whether born upon the soil or made such by the law, will by the act of annexation be made a citizen of the United States. But I doubt the power of this body to declare that any persons will be made such, who are not now citizens of this country, or would not be citizens by our Constitution and laws. With regard to the first position, if any other proof is necessary or illustration wanting, the Constitution of the United States gives us the power to elect members of Congress. Now, members of Congress must have been residents for a certain number of years in the United States. And we cannot elect representatives or senators, when a term of years is required, unless we are made citizens by the act of annexation. We have our selection of the whole population, and the whole must be citizens. The power of naturalization vested in the United States' Congress, as I believe, has nothing to do with this question, and ought not to be introduced into the debate. The question of citizenship is one upon which we should first decide. It is declared by the resolutions that we shall be admitted as a *State*. If I understand the matter, we are to be admitted upon an equality with the thirteen States which sanctioned the Constitution. I believe that all who are citizens here before the adoption of the Constitution, will be citizens of the United States; but I do not believe that every person domiciled here will be a citizen. This Constitution is to be formed by the people of this Republic. What people? As I understand it, by the people who are qualified to adopt it. I do not go to one extreme or the other. My position is simply this: that our Constitution must continue in force until we are annexed, unless we do some act to suspend its operation, and that all the rights which mature under that Constitution will be good under any change of government; and I believe I might go further; but I doubt the policy of it; I question the good faith of it. I do not think it would be best or proper here to make those citizens who would not be made such in accordance with the Constitution and laws of the United States. In listening to the opinions and arguments of some gentlemen upon this subject, one would think that members were making speeches against annexation. According to them, a large portion of our citizens may be thus indirectly stripped of all their rights and privileges. I care not, sir, whether a man was born in Mexico, India, or the South Sea Islands, if according to the Constitution he is a citizen of Texas, in my opinion he will be a citizen of the United States. A person born upon the soil, indigenous to the soil, to use such a word, by the operation of universal law, always in force unless there is some special municipal law repealing it, is a citizen. There is another class, those who have sworn to bear allegiance to the country, whose naturalization has been authorized by the laws. Beyond these I will not go with the principle. It is true we might declare all persons who are resident here citizens. But it might be well questioned whether we should act in good faith in doing so. It might be asked if we had not taken some

advantage of our position. Our acts will come under a very close scrutiny, and this course might savor of unfairness, and perhaps defeat the very object of the labors in which we are engaged. I, sir, will support any declaration that those who, prior to the adoption of this Constitution, are citizens of the Republic, shall be citizens of the United States; but beyond that I will not go, directly or indirectly.

Mr. Mayfield withdrew his amendment for the present, to enable Mr. Ochiltree to offer a substitute.

Mr. Ochiltree offered the following as a substitute for the substitute offered by Mr. Rusk:

"At the first elections held under this Constitution, every free man of the age of twenty one years, who shall be a citizen of the Republic of Texas at the time of the acceptance of this Constitution by the Congress of the United States, shall be deemed a qualified voter.

In all succeeding elections, every free man of the age of twenty-one years, who shall have been a citizen of the Republic of Texas, or shall be a citizen of the United States, and shall have resided twelve months in the State, the last three months thereof in the county or district in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified voter: Provided, that no officer of the regular army, soldier, seaman or marine, in the service of the United States, shall be authorized to vote.

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

Saturday, Aug. 16th, 1845,  
Half past 8 o'clock, A. M.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Jones, the Convention took five hundred copies additional of the "New Era," for this week.

On motion of Mr. Van Zandt, Mr. Clark was excused from attendance on the Convention, on account of sickness.

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

#### ORDERS OF THE DAY.

Mr. Ochiltree's substitute for the first section of the Legislative re-