

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.

call the attention of gentlemen to the fact, that the Legislature has made but one innovation with regard to the rights of man and wife; and that was in 1840. The gentleman bases his argument upon the supposition that the Legislature will be composed of corrupt and iron-hearted men; when in truth experience has shown that there is more gallantry in this age, than there ever has been at any period in the history of the world. According to the gentleman from Liberty, the age is going on improving, and the State of Louisiana has gone far beyond all other countries. Why, sir, there, instead of the man's making a beast of the wife, the man is the beast of the woman; for he cannot buy himself a shirt without the order of the wife; and he is a beggar on his own plantation. She can kick him out of the house at any time, under the system advocated by gentlemen here.

On motion of Mr. Darnell, the vote was re-considered.

On motion of Mr. Hunter, the vote adopting the previous question was re-considered.

On motion of Mr. Rusk (Mr. Lewis in the chair) the section and substitute were referred to a special committee.

The President then announced the following special committee: Messrs. Darnell, Davis, Hemphill and Rannels, and on motion, the President was added to said special committee.

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

Monday morning, August 18, 1845.
Half-past 8 o'clock, A. M.

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

Messrs. Burroughs and Parker were excused from attendance in consequence of sickness.

Mr. Gage offered the following resolution:

Resolved, That the members of this Convention shall not be entitled to per diem pay for services performed in this Convention after Thursday, 21st inst.

Which was laid on the table one day for consideration.

Mr. Lusk offered the following as an article of the Constitution :

"There shall be appointed annually by the Treasurer of this State one Assessor and tax collector, for each county, who shall be residents of the county for which they may be appointed, whose duties, obligations, and responsibilities shall be prescribed by law."

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

ORDERS OF THE DAY.

The General Provisions being first in order, was taken up.

The 21st section being before the Convention,

Mr. *Jewett* said: Before the vote is taken, Mr. President, I wish to address the Convention in favor of the section proposed, and as succinctly as in my power to give a summary of the laws authorizing the creation of these contracts, a brief history of the proceedings relating to them, and a statement of their present condition. I will do this with as little prolixity as possible. I propose in a few words to state the laws authorizing and regulating the creation of these contracts, and to show the justice and expediency of suspending them. The first act, authorizing the creation of colonization contracts under the laws of Texas, was passed in 1841. It authorized the President of the Republic to make a contract with W. S. Peters, Daniel S. Carroll, and others, for colonizing and settling vacant lands on certain conditions; that they were to introduce a number of families, to be specified in the contract, within three years; &c. The President was authorized to designate certain boundaries. It provided that not more than 640 acres of land, to be located in a square, should be given to any family comprehended in the contract; that all expenses attending the selection of the land, the surveying, title, &c., should be paid by the contractor; it authorized the President to allow the contractors for their services ten sections of land for every hundred families introduced, as a donation. The contractors were required to have one-third of the whole number of families contracted for within the limits of the Republic before the expiration of one year from the date of the contract.

In the succeeding year another act was passed, which extended the provisions of the first law, and made a general law, authorizing the President to make contracts with any number of persons with whom, in the exercise of his discretion, he might think proper to make them. I will read this second act, passed in 1842. The first law made provision for a special contract; this, for an unlimited number of the same character.

[Here Mr. Jewett read the act referred to. He continued.]

The second section of this act provides that all the rights accruing to W. S. Peters and his associates, by the provisions of the former act; and

all the duties, obligations, and conditions, imposed by the same on Peters and others, should be extended to such other companies as might be organized under the provisions of this act.

In 1843, again, a joint resolution was passed relative to colonization contracts, entitled a "Joint Resolution to modify the provisions of an act entitled an act granting land to Emigrants." The preamble recites that a certain contract had been entered into with Carroll, Peters and others; and sets forth the expediency of modifying some of its provisions and extending some of the privileges before granted: in consequence of the contractors having been unable to fulfil the conditions, and introduce the required number of families within the time designated. This law permitted the contractors to introduce any number of families, not exceeding ten thousand in all, upon the same conditions as before. It required that the grantees should survey the land assigned to them, as before provided; it provided that they should be required to settle or receive such lots only as should be of fair quality for agricultural purposes, and that whenever they should have completed the surveys of any number of sections, and built a corresponding number of small comfortable houses or log-cabins, and placed families therein, they should receive a title from the government to one section of 640 acres for each family so introduced and settled, &c. It provided further, that in case of forfeiture the parties should only be affected prospectively; and further, that the Cherokee lands should be exempt from the provisions of the act.

Such was the situation of the laws upon this subject during the year 1843. I believe that the contractors had but little success in introducing families, and at that time, I may state it distinctly and boldly, not one of the contractors had ever performed the conditions specified in their contracts; they were out of existence; they were all forfeited; and the government had then the authority and would have been justified in resuming the lands embraced within the limits of the colonization contracts. At this period the attention of the Commissioner of the General Land Office was attracted to the subject, and in his annual report for 1843 he calls to it the attention of Congress. The position occupied by the commissioner (Col. Thos. W. Ward) and his acquaintance with the subject, entitle his suggestions to respect. I will, therefore, solicit your attention to a short extract from the communication to which I have referred, relative to the colonization contracts.

[Here Mr. Jewett read the following extract from the annual report of Thos. Wm. Ward, Commissioner of the General Land Office for 1843]

"The law granting lands to emigrants, approved January 4th, 1841, and the amendatory law thereto of the 6th Congress are illegal, impolitic, and objectionable, on several grounds. The several laws granting lands to emigrants have induced many to come to this country under the belief that they could select their head-right claims from any of the vacant lands in the Republic: the donations to soldiers had likewise caused

many to remain in the field, when there was an apparent necessity for them. Script has also been bought from this government, solely from the belief that the vacant lands of the Republic would remain open for locations of all kinds of claims issued by the government, and that the only loss or prejudice that the holders of claims would be liable to sustain, would arise from their own tardiness and negligence in not securing the best land before others having equal claims; but they did not suppose that the government would prejudice their right by such wholesale donations of the best and most valuable lands. The unsettled state of the country has heretofore prevented them from making location on the land that has been granted to these colonies. The Land Office is not yet open in Bexar county, where the land reserved to Fisher and Miller's colony lies; owing to the records of that county having been sent, during the invasion of March '42 to Gonzales for safe keeping, and until a short time since, no locations could conveniently be made on the immense tract included in the contract made with Peters and others; many of the numerous holders of different kinds of claims issued by this government, would without doubt, have taken advantage of the first favorable opportunity to have located their claims on these lands contracted away by the government. The grants of head-right certificates to emigrants, and the script sold by the government of various kinds, amount to an implied contract between the government and the grantee, that the latter shall have at least the first opportunity of locating his claim upon any of the vacant lands of the Republic. From the reasons above stated, that it was impossible for locations to be made, owing to the unsettled state of the country, this implied stipulation has been violated on the part of the government, by its having contracted away the most valuable lands before an opportunity was offered claimants of locating them. It is by no means held that the government should not make grants as they have heretofore, but there is a very material distinction between this and an entire preclusion to the holders of claims from locating the lands that now are, or are likely to be valuable for a considerable length of time. The lands in this country constitute the principal wealth of most of its inhabitants; upon the value of them they have founded their hopes of success. The government of this country has encouraged this hope, and it would therefore be the greatest injustice for it now to preclude emigrants from the United States from locating their claims on our frontiers; to give these lands to crowds of foreigners who never shared in our struggle for independence, and who come to this country from mercenary motives only, and send our own citizens to the Commanche and Buffalo ranges to select lands, after they have waited for years to perfect and enjoy their claims, in the confident belief that the government would act towards them in good faith. Every Texian now within our borders feels a greater interest in this country than the foreigners to be introduced under these contracts can possibly be brought to feel, and future events may prove that the best policy of

our government would have been not to have lessened this feeling by giving to foreigners the reward due to our countrymen and they who have proved themselves our friends in the hour of need. It is furthermore believed that contracts of this kind are monopolies, within the meaning of the Constitution, and if so, did they not even prejudice the rights of claimants under this government, they are illegal.

The contractors may sell the benefits of their contract to monied capitalists in Europe, who, for trifling considerations, the transportation of the emigrants to this country for instance, can purchase the emigrants' lands, and thus the principal object of the government, in granting these lands, which was to secure a home to the emigrant, would at once be frustrated; the wealthy speculator would monopolise the lands and receive the benefits of the benevolent object of the grant, and the emigrant would either be held by them in a kind of vassalage or slavery, or they would wander without a home, dependant upon the charity of our citizens. The evils incident to these laws, and the contracts made under them, should be remedied as far as possible. The repeal of the laws would prevent other contracts of a similar nature from being entered into, and the longer existence of them will render every acre of vacant land in the Republic liable to be monopolized. But if this system of contracting away vacant lands is considered politic, a law should be passed limiting the time within which the holders of land script warrants, head-right certificates, &c., should locate their claims.

Signed by Col. Ward, present Commissioner of the Land Office, and dated November, 1843.

That brought the attention of Congress to the subject, and I presume had an influence in causing them to repeal the law, which they did during that session (1843-'44), by an act entitled "An act to repeal all laws now in force, authorizing the President to form colonization contracts, and to forfeit such as have already been made, where the conditions have not been strictly complied with." This act it appears was passed by a constitutional majority on the 30th January, 1844. At that time one Charles Fenton Mercer was in the town of Washington, soliciting Congress to give him a contract, with large privileges, embracing millions of acres. Congress seeing the deleterious effects of the system, repealed the laws authorizing it by a large majority. The President vetoed the act, and sent it back, and while it was in progress of being passed over the veto, I think on the very day of its passage, this Mr. Charles Fenton Mercer concluded his contract. This, as I conceive, was an express violation of the will of the people, and committing a fraud upon them.

Now, sir, the majority of the committee have reported in favor of suspending all these contracts without exception. And if this provision is adopted, it will operate no injustice whatever to the contractors; it is the line of safe precedent; it will be both just and expedient. And I contend that the only rule by which we should be guided, is the public welfare.

Sir, in pursuing this course, we shall but pass an act similar in its character to that adopted by our former Convention. The Congress of 1837, in the general law, entitled "an act to reduce into one act, and to amend the several acts relating to the establishment of a General Land Office." provided or declared (§26) that all empresario's contracts having ceased on the day of the declaration of Independence, all the vacant lands of Texas were the property of this Republic, and subject alone to the disposition of the government of the same.

I have heard much declamation here about vested rights, about the impropriety and illegality of interfering with vested rights. But here Congress, by one sweeping clause suspended all these contracts. And I have never heard of one single murmur or complaint on the part of the Empresarios. They have brought suits against the Republic; in some they have recovered, and others are still pending. Even if the new colonization contracts have created vested rights, I would have them preserved. But I only regard with sympathy the rights of the settlers; those of the contractors I regard only as vested wrongs. These recent contracts were conceived in fraud, and carried on in fraud. They were made with the sovereign authority of Texas, and ought to be subject to all contingencies, and that sovereign authority, whenever it finds it necessary to change the form of government, or expedient to repeal such contracts, has certainly the right to do so. We have provided that private property can be taken for the public benefit, in making compensation therefor. These contracts may then be suspended, provided adequate compensation be made therefor. The contractors cannot then complain that we are interfering with their vested rights, since we make ample provision for an indemnity.

I am in favor of suspending these contracts, because they are all forfeited. None of the contractors have introduced the stipulated number of families, nor have any of them afforded protection to the frontier—the inducement presented to Congress for making the law. At that time the frontier was infested with Indians; war was threatened with Mexico; and the prospect of annexation was gloomy. It was thought that by authorizing these contracts, adequate protection would be afforded to the frontier. But this expectation was not realized.

Another reason which I have is, that it would be a mere act of justice to the soldier, and all those who encountered the perils of our revolution. The first and most sacred pledge on the part of the government, was that which gave the lands to the soldiers after the revolution of 1836. The Republic had then no money to give, and she did promise to give them all that was in her power, to wit., lands. I would vote therefore to suspend these contracts, because they interfere with this first and most sacred pledge.

I will also vote to suspend them, because by so doing we shall increase the residue of the public domain left for the payment of our public debt. This is another cogent reason for me to pursue this course.

I am aware that it will be argued by the opponents of this measure, that the Senate or Congress of the United States may urge this section as an objection to the acceptance of our Constitution; that they may regard it as interfering with vested rights. But I cannot see what right the Congress of the United States can have to interfere in this matter. The Joint Resolutions leave to Texas the exclusive control of her public domain. If we retain the public lands, we retain the right of exercising sovereignty over them; and the United States has no right to interfere with or dictate our action. It is a matter which pertains exclusively and solely to Texas; it is a matter relative to her domestic concerns. And if with an honest view of liquidating her public debt, she suspends these contracts, and throws open these lands to location, she is but doing an act of justice which will remain a bright and not a dark spot on our national escutcheon.

I am not one of those who apprehend the great danger which some anticipate in connection with abolition. Yet from statements which have been made by members of this Convention, I think there is reason to believe there may be some danger from this cause, unless these large contracts are suspended. I have referred to the law authorizing the introduction of ten thousand families by any one contractor within the time limited. There may be danger from this source. Within the eight or nine months before the adoption of our Constitution, five or six thousand votes may be thus introduced into the Western country, and then this may be no chimera floating before our eyes.

I have stated my belief that all these contracts have been forfeited. Such I honestly believe to be the fact. I would call upon the gentlemen here from every part of the country to say if it is not so. I call upon the gentleman from Travis to say if the contract of Miller & Fisher has not been forfeited? I ask the gentleman from Refugio if it is not the case with the colony upon the bank of the Rio Grande? and I ask the gentleman from Fannin, whether the large contract made with Peters and others is not forfeited; whether they have not failed to comply with the terms of the contract? I am aware that they have introduced a larger number of families than any other contractor; but when the terms are strictly examined, the gentlemen themselves cannot deny that the contract is forfeited.

It may be that in pursuing this course, the Convention will assume judicial powers. The former Convention cancelled the grant to John T. Mason, and we have adopted a similar clause; and I hold that we are fully competent to do so. We can create and delegate judicial authority, and if we can do this, we can exercise it ourselves.

These are briefly the reasons which have induced the majority of the committee to report the section, and actuate me in supporting it. I would ask these gentlemen who come from the proper sections of the country to answer the interrogatories I have proposed, and state from their knowledge of the facts whether these colonies are not all forfeited?

Annexation is about to take place, and a flood of emigration will pour into the country; the government does not give any bounty land to settlers; the contractors hold out the inducement of a certain quantity of land; and the number of inhabitants which they have agreed to introduce, will settle in the country without any exertion upon their part. Now, sir, is this carrying out the intention of these contracts? No, sir: it was intended and expected that the settlers, in these colonies should come to the country at the instance of the contractors, that the contractors themselves should be the moving cause of their emigration. And, sir, I contend, and I believe that any court of justice will determine that an accession of individuals coming, of their own accord, is not a compliance with the conditions of the contract. And I do not believe, sir, that this course would be doing the contractors so great injustice as some gentlemen seem to think. To suspend the operation of their contracts, would give them the benefit of them to the present time, and give the settler the benefit of their settlement upon them. Sir, I think we should take into consideration the policy of the country; and I will ask this Convention if it is the policy of the country to allow foreigners to make fortunes by speculating in the lands of Texas; men, who, as the gentleman from Nacogdoches well remarked; have never raised an arm in the defence of the country, or spent a cent to advance its interests? Some of these same individuals, sir, who claim the whole broad side of the country, have recently taken the stump against annexation, and exerted themselves to the utmost extent of their ability, to defeat this great, and important measure, upon which the interest of the country depends. And these are the individuals whom we must not touch. We are told that we have made a contract with them, and we must carry it out, although they make stump speeches against annexation, and denounce Texas at every corner; still the weight of a finger must not be laid upon them. I do not pretend to know the character of all these contracts; but I know something of one of them; and I do not believe it will be doing any injustice to the individuals concerned to make a brief statement of the facts. It will be recollected that one of these contracts, which embraced the finest and largest tract of land upon the Trinity river, was made by Charles Fepton Mercer. How was it obtained, sir? I cast no censure upon any individual with whom it was made; I think in all probability an imposition was practised upon him by Mr. Mercer, for I know that he did practise a fraud at the time he obtained the contract. He appeared at Washington at the time of the session of Congress, and said that his business there was to get an extension of time for Peters' contract. What were the reasons he urged? He said that in the treaty between this government and the Comanche Indians, the Republic had stipulated that no settlements should be made in a certain portion of the country which he represented to be included within that contract. He said that justice required that the time should be extended, at least so long as settlements were prevented in consequence of

the treaty. At that same session of Congress, a law was passed repealing the law authorizing these contracts, and prohibiting any further extension of time being given in any of the contracts. During the time of its passage, and between the time at which the bill was sent to the Executive for his sanction, and at the time at which it was returned with his veto, a new contract was made with Mr. Mercer. And what was the character of that contract? Was it an extension of time to Peters? No, sir. It was a contract granting him the whole broad side of a country. Did he not know it was in opposition to the will of the people of Texas, so expressed by Congress at the time? He obtained the contract under these circumstances, professing that he was only seeking an act of justice in the extension of Peters' contract. That was not all. With this contract in his pocket, and without communicating the fact to any member of Congress, he requested to be heard upon that subject, and the reasons which he advanced were those I have mentioned. At the very time he was urging these claims, he was practicing this fraud; for I pronounce it a gross fraud upon Congress. He had at this very time a contract in his pocket by which the fairest portion almost of the upper Trinity was granted to him. I will ask, sir, if this man could have believed any thing else but that the people of Texas at the first opportunity would annul that contract? He must have known it. I do not pretend to say under what circumstances others of these contracts were made; but I do pretend to say that this was made under such circumstances as to give this Convention the right to say that it is null and void; not because it was unconstitutional, not because it conflicts with any other claims, but because it originated in fraud, which made it not only voidable, but void *ab initio*, and all that is necessary is for this Convention so to declare it.

I know, sir, that in all probability I have detained the House longer than I should have done.

Mr. Runnels offered the following amendment to Mr. Mayfield's amendment:

Strike out "the final action of the United States' Congress upon this Constitution," and insert "the time of the adoption of this Constitution by the people of Texas," and strike out the words "secured or," in the 10th line.

Mr. Love said: I shall not attempt to enter into any argument, but simply express my own views in relation to these contracts. It is not necessary now to go back to the manner in which they originated. The only question before us now, is what we are to do with them. I believe that injustice and right they ought to be annulled; but at the same time I have a great objection upon the grounds both of principle and expediency to voting for an interference with any rights actually vested, whether rightfully or wrongfully obtained. I am more favorably inclined

towards the proposition of the gentleman from Nacogdoches, to prohibit any future extension of time, and give the contractors no claims whatever further than we are compelled. And I would much prefer suing them to giving them the power to sue us. I do not believe that any of these contracts have been complied with according to law, nor do I believe that any one of them was granted according to law. The only question to be decided, it seems to me, is whether we prefer to annul them absolutely, or to take the alternative offered by the gentleman from Nacogdoches. I will at the proper time offer an amendment which I think will strike at the root of the evil. [Mr. Love here read the amendment which he proposed to offer].

Mr. Wright said: None of the propositions which I have seen upon this subject entirely meet my own views, and I believe that every one has the right to have and express his own peculiar notions. The matter is that we have gotten into a scrape by misfortune or folly, and now we are laboring to get out of it. The objects which induced the government in the first place to enter into these contracts, have failed to be attained. All parties are willing to concede that much. The great object on the part of the government was to secure the frontier settlements from the continual marauding incursions of the Indians and Mexicans. In order to effect that, the government entered into contracts with these individuals, giving them unlimited powers, unprecedented as it was, for the introduction of settlers, who might meet and successfully repel any attacks upon the frontier. Now, I would ask gentlemen who are advocating an extension of time upon these contracts, whether these individuals have ever taken the first step to secure the government the protection contemplated in the origin and creation of these contracts?—Then, sir, in proportion to the exertions made by these parties, in good faith, to carry out the end and aim of these contracts, is the government of Texas bound to compliance upon her part, and no further. If they have gone to considerable expense—if they have made use of means and exerted themselves in other ways, to accomplish the object, and have made the result visible in the community, then they are to receive that much as a credit upon their part of the performance. Some gentlemen seem to know nothing about these contracts, except the law which created them. There is one of them in particular, sir, which I have made it an object to inquire into, and I think that one may serve as a sample to them all. That is the one last made, which has been alluded to by the gentleman from Liberty. The circumstances under which it was made were very peculiar. And if the party ever attempted to benefit the government in any way at all by the obligations imposed by virtue of of the contract, I have never yet been able to learn it. That contract, sir, appears to me to have been made in violation of the law under which it purports to have emanated; and if so, it had no force from the beginning. In these contracts, in the first place, they have to set down

in round numbers, the number of families they design to introduce; then they have to bind themselves to introduce such a number in a certain proportion each and every year from the date stipulated until the number is completed. In the next place, they have to set down the metes and bounds of their colony, and to mark its lines, so that the common surveyors of the country cannot come into conflict with the rights of citizens accruing under the contract. Then, if we find that they have totally failed even to attempt, much less to perform, any one of these things, the government is certainly not bound to fulfil her part. It will be found upon examination, that in the contract to which I have alluded, the very first principle is violated. The number of families is not set down at all; and the only way to arrive at the number contemplated, is by calculating the number of alternate sections contained within the bounds of the colony. You will find, again, that the metes and bounds bring the colony into direct conflict with the Cherokee territory, which was specially reserved. Under these circumstances, the government is of course under no obligation whatever to give these contractors any extension of time, or to grant them any exclusive privileges to the prejudice of her own citizens. The question, then, arises, is it expedient for this Convention to do justice to the great mass of the community in Texas? Which of the parties has the greatest claims? Shall we chiefly consider the rights of the citizens, who have fought for the country, and maintained it from the beginning, or those of these speculators who have never dared to place their feet upon the frontier, and have never raised a hand but in contradiction of her best interests? Are we to consult the convenience of one or two individuals, or that of the whole people of Texas? Where do these gentlemen reside? Who are they?—Are their rights and interests identified with ours? No sir. Then I hold the principle, that we are bound to protect ourselves first. It is the duty of this Convention, to consult the convenience and interests of the people of Texas; and it is upon this principle that we have to act upon these contracts. So far as they have been complied with, exceptions should be made. So far as the contractors have acquired rights, and so far as they can make that fact appear before the courts or the Convention, those rights should be secured, and no farther. I am willing to give them all that they are entitled to; but I am not willing to extend them any favor when they have taken no steps to carry out their contracts. Some allusion has been made to the probable situation of a portion of the country, in consequence of annulling these contracts and opening the lands to surveys. Sir, I hold it as a principle, that we are bound to pay our debts, however contracted, when we have the power so to do. So far as the rights of citizens are to be endangered, my opinion is this: I do not conceive that it will have any material effect upon those who occupied a portion of that country before these contracts were made—those who have lived upon the frontier about thirty years, have lived there too long by about twenty-five, I think. That section of the country was

very much annoyed previously to the passage of the law authorizing these contracts. From 1838 to 1841, the northern frontier was one continued scene of bloodshed and warfare. The counties of Lamar and Fannin were entirely laid waste and desolate, and just at the time when the last settlement in Fannin county was about being abandoned by Captain Bailly English, and his associates, and perhaps forever, Major Jonathan Bird came to the rescue and saved the people. He then advanced about ninety miles to a point upon the west fork of the Trinity, and there maintained his post, thus giving entire security to the settlements in Fannin county. Major Bird was at his post, with about twenty men and a considerable number of families, when he was ordered off and driven away by the agents of Peters' colony, who then gave him the first intelligence he had of the existence of such a contract. Since that time these persons have changed their course; but they have not satisfied my mind with regard to the illiberality with which they treated these poor fellows, who have never asked or received a dollar for the services they rendered upon that particular occasion. I am as willing to give the emigrants their rights as to give the old settlers theirs. I am not desirous of sacrificing the rights of any. We can guard the rights of all, and extend mutual benefits to all alike. And if any one should attempt to interfere with the rights of others, we can give them a law to which they may appeal. I am willing to give these people every foot of land they have earned, and to throw in a little more. As to the colony to which I have referred, I contend that it has no claims upon us whatever. No man here will say that contract was made originally in conformity with justice or equity. Let us examine for a moment the circumstances under which this contract was entered into with Charles Fenton Mercer. We find him here at the 8th Congress, supplicating for the contract; and see the privilege allowed to Gen. Mercer. He was permitted to appear before Congress, and advocate the principles set forth in his contract. And what did that Congress do? They rejected all of his demands with disdain. As nearly as I can recollect, the vote stood 33 to 6. He then sought the President, to see if he could not meet with better success in that quarter; and the Congress seeing what he was up to, introduced a law repealing all laws upon that subject, which passed both the House of Representatives and the Senate, and was sent to the President on or about the 22d day of January, 1844, for his approval, and about the 27th of the same month he sent it back to the House with his veto. Upon the 28th, the House passed it over the veto by a vote of 34 to 5, and sent the bill and veto to the Senate upon the 29th. And upon that same day, to the astonishment of all his friends, he signed, sealed and delivered this instrument called a contract into the hands of Charles Fenton Mercer, and that too with a perfect knowledge of all the facts, well knowing at the same time what would be the action of the Senate upon the law under consideration. And upon the 30th day of the same month the Senate did pass the law over the

veto of 8 to 3. Thus this contract was made under very suspicious circumstances, to say the least. This is enough to kill it of itself; the presumption of fraud is too strong for it ever to be tolerated by the people here. Then, I say, it is the duty of this Convention to arrest this foul attempt to impose upon the people of Texas; to declare this contract a nullity in itself, as it always was, and open this country, thus attempted to be wrapped up in mystery and fraud, for the honest payment of the debts of Texas. This one is an exception; there is no right in it; it deserves the execration of this body.

Mr. Mayfield accepted the amendment offered by Mr. Runnels.

Mr. Everts said: Being called upon, as I imperiously am, to say something upon the subject of the colony contracts of this Republic, I will endeavor to give my reasons in a very brief manner, why I cannot vote for the proposition now before the House; that is to suspend, or in other words, to amend and set aside the various colonization contracts of this Republic. Of the precise provisions and details of the various contracts, I am not empowered, except as to one: that is the contract made with Peters and his associates, neither is it necessary here to discuss the merits of those contracts. Nor, Mr. President, is it necessary, nor shall I say much upon the policy of granting them in the first place. Congress, in the year 1841, passed an act, which authorized the President, then Sam. Houston, to make a colony contract with Peters, and others. In the year '42, this law, by another act, was made general, giving the President power and authority to make as many colony contracts as he might deem proper and advantageous. In 1843, a law passed by the Congress of this Republic granting further time to Peters &c. to comply with the conditions of his contract, and during the same year that contract was modified, and new and different conditions were agreed upon, and entered into by the contracting parties. About this time the government entered into a contract with Charles F. Mercer, when the law authorizing such contracts to be made in future, was repealed.—All this legislation upon the subject, through successive sessions of the Congress, is strong evidence to every mind that the policy was deemed good, and that there was a necessity for its adoption in order to people this country, and induce emigration to it.

I could draw, were I permitted, a distinction between the policy and propriety of entering into the various contracts. Peters was the first one made, and that company had expended large sums of money in attempting to comply with the conditions imposed, they had introduced a large number of families, and in some measure given protection and quiet to the frontier, when the law was repealed, authorizing grants of this kind to be made. The Mercer's contract was made after the Legislature had repealed this law, but before the repeal was approved by the

President, so it would appear that the necessity and the policy of entering into the Mercer contract, were deemed by the Congress not to exist at the time. And were I to express an opinion, I should say that there was no necessity for this last grant to be made, as the time had gone by, and Texas was in a condition not to hold out such immense inducements and bounty to emigrants. So much for the policy.

It is said, sir, that these contracts are all unconstitutional, and therefore this body ought to annul them.

So far as I have examined the subject, I cannot perceive the force of this assertion. I hold, Mr. President, that by the revolution and the independence of Texas, all the unappropriated lands within her limits became the property of, and the title vested in the government of Texas. If this be true, had not the government a right to dispose of it in any manner it might think proper and advantageous. Do gentlemen, or can they draw any sensible or constitutional difference between giving 640 acres to an emigrant simply because he emigrated to Texas within a given period, and giving the same amount upon the conditions of the colony contracts? I really cannot perceive any difference; both modes are bounties, and inducements held out to the world that Texas will give to the settler upon her public land 640 acres. It is not pretended, from any quarter, that the 640 head right grants are unconstitutional. And why? Because the unappropriated lands belong to the government, and it has a right to dispose of it in any manner thought proper. It is said that about 400 leagues of land have been granted to the different counties for the support of schools and colleges. Are these grants unconstitutional? Are they all null and void? No one can pretend, for a moment, that they are. But it is said that they are monopoly, and therefore unconstitutional, inasmuch as monopolies are prohibited by the constitution of this Republic.

To this assertion, I would reply that the law under which the President made the colony contracts is general in its character—it is not exclusive. It authorizes him to make as many such contracts as he pleases. Under this law, some four or five colony contracts were made with different individuals, and of different nations, there is no exclusiveness about it.

A monopoly, if I understand the term, is the granting a privilege to a particular individual or company, which is prohibited to all others.—But, sir, a law which gives the right to all alike, to partake of its benefits by complying with its conditions, can never be deemed exclusive in character, although but few may partake of its benefits. Such, I take it, is the character of the colony laws—and if so, those contracts are no monopolies.

But, sir, suppose that I am wrong in all the positions and arguments

advanced, I would ask if this body is the proper tribunal to pronounce judgment upon these contracts. I do not believe this Convention was called for that purpose. And I ask if it would not be acting in bad faith to annul and suspend these contracts in this *ex parte* manner. These contracts have been at various times solemnly entered into, whether they are fraudulent in their character, or unconstitutional or not. This, sir, is not the place to try those questions.

Let the whole of the questions involved in the subject be referred to the courts of justice; let the parties be summoned into the halls of justice; and if, upon a rigid inquiry, it shall be found that these contracts are unconstitutional, let the courts pronounce them at an end, and declare them forfeited. If, sir, the contractors have not complied with the subsequent conditions of their contracts, they must by the very terms of them be declared to be at an end.

But, sir, a court is the proper place to make this investigation. Sir, I would not, for another and stronger reason than any other, declare these contracts at an end. Texas is now attempting to form a constitution which is to be republican in its character, in order to be admitted into the American Union as one of the States of that confederacy. And the instrument which we frame here must, in all respects, be consistent with the constitution of the U. States. That instrument and the treaties, and acts of Congress made in pursuance thereof, will be the supreme law of the land, the constitution of any State or act of any State Legislature, to the contrary notwithstanding. That instrument declares that no State shall pass any law impairing the validity or obligation of a contract. Would not the suspension of these colony contracts by this body, *ex parte*, be an act directly conflicting with those provisions of the U. States Constitution? I solemnly declare that I believe it would. Insert this suspension clause into our constitution, and, sir, I fear all our labors here would be in vain, and annexation an idle dream. Would not the Congress of the U. States reject our constitution and justly too? You would give to the enemies of annexation the advantage, and the party opposed to our admission into the Union is a powerful one, although not in power now, and you would place the friends of the measure in a condition to compel them to vote against the acceptance of our constitution, the consequence would be, Mr. President, the postponement of our admission into the Union, if not an entire defeat of the whole measure.

Therefore, I repeat again, let this whole subject of colony contracts be referred to the proper tribunals of the country, and I have the fullest confidence that entire justice will be done in the premises.

Mr. President Rusk, [Mr. Darnell in the chair] spoke as follows: I cannot agree with the gentleman who has just taken his seat, that this contract stands upon high ground. If he had said that it covers a vast

deal of ground, I would cheerfully agree with him. I shall myself, if compelled to vote, vote against the section as now presented, but upon very different grounds from those of the gentleman from Fannin.

These contracts, I believe, were unconstitutional in their inception. The law which was passed authorizing them to be made was unconstitutional on various grounds. In the first place, if I understand the true monopoly, it was giving to a few individuals, not residents of the country, individuals who had not mingled in the strifes and shared the sufferings and perils of the revolution, who had never struck a single blow to redeem our lands from the foe, a large monopoly in the country. Our land system is peculiar. At one time our all was in jeopardy; there was a time when we needed the assistance of every strong arm which we could command, for the purpose of wresting from the hands of the tyrannical Mexicans, the titles to these very lands: At that time the Consultation by the strongest guaranties of which the English language is capable, promised to those who should come then to the country when their aid was needed, and render proper service, the right to locate any vacant and unappropriated lands in Texas. This right was then strongly guarantied by the Constitution. Then those who emigrated here in the hour of peril, darkness and despair, are clearly entitled to the location of their head rights. Those who took up arms and mingled in the strife are entitled to the location of their bounty warrants. There was a strong guaranty given in the Constitution, and in all the laws afterwards passed on the subject, that they should have the entire territory of the Republic to select from. Then this strikes my mind as being an obligation which future speculation by no means could destroy. The government further guarantied to the representatives of these noble spirits who fell under Fannin and Travis the right to locate a certain amount of the lands which their husbands and fathers had earned in their last dying struggle for freedom. This law, then, not only authorizes a monopoly, but granted away a right which the Convention and the people had guarantied to others. It was contrary to the spirit and genius of our institutions; and I am satisfied that whenever these contracts come before any judicial tribunal, and all the laws bearing upon them are investigated, they will be declared absolutely null and void, as in direct contradiction to Constitution provisions of the Republic of Texas.

These gentlemen, says the gentleman from Fannin, have rendered the country important services. In what field, sir? Where, let me ask? When have their voices been heard in the councils of the country in her darkest moments? Where have they borne arms in her defence? The voices of some of them have been heard in Texas, they have been heard in the United States, crying out against the very measure, which to my mind guaranties the unmolested enjoyment of all their rights, to those who have fought the battles of their country, and served her in her darkest days: our annexation to the United States. And do they de-

serve our kind and fostering care? Shall we, from motives of policy, turn off the soldier, who has fought, and the heirs of those who have fallen for the redemption of the country? Shall we say to them, we must reserve these lands: not for the actual settler, for he is protected: and I here solemnly enter my protest against the amalgamation of the actual settler with that of the foreign speculator who is endeavoring to make a fortune out of these emigrants. The settlers are citizens of the country, they are here for weal or woe: they have their rights guaranteed to them by this very section itself, and shall have in any article which I will vote for upon this subject. I protest also against the idea that we have ever attempted to curtail the rights of those who came yesterday. Such arguments as these are totally useless. They have no foundation in the opinion of the people of Texas, nor in the acts of their deliberative bodies or of this Convention itself: Then there are no parties here but the government of Texas on one side, and the contractors on the other; and I shall go just as far as I think we can go with a proper respect to ourselves.

I shall vote against the 21st section, because, if these contracts are constitutional, this Convention may have the power, but I deny the right, to interfere with a single vested right. That contains a sort of admission that they are in accordance with law.

And I take this broad ground; that when this Constitution goes before the Congress of the United States, that body may imagine that we are here destroying legal and vested rights. If they should believe that, it is competent for them, and it would be their duty to reject it. The gentleman from Robertson referred us to our Constitution of the Republic of Texas. Sir, that Constitution was made under very different circumstances from this. We are making here a State Constitution; we have acknowledged the supremacy of the Constitution of the United States of America. We are going into that Confederacy, and therefore give them the entire right of making our Constitution. In this Constitution is an article which says that no State shall pass any law impairing the obligation of a contract. And I would be unwilling, however bold I might be, when we could reach the object by a different route, to run ailt against the Constitution of the United States.

Again, it is a principle of law, as has been stated here, that if we put it out of the power of the contractor to comply with his contract, the obligation rests upon us, to comply with that contract to the letter. It is not only a principle of law as held in the celebrated Aredondo case in Florida, which went up to the Supreme Court of the United States, but it is a fundamental principle running through all contracts.

Then, sir, this 21st section might involve us in many difficulties; and under the circumstances, I shall feel myself bound to vote against it. I have, with the assistance of other gentlemen, drawn up a section which I propose to offer as a substitute.

Mr. Rusk offered the following as a substitute for the 21st section :

Whereas, it is believed that the colonization contracts heretofore entered into by the President of Texas, as well as the laws authorizing said contracts, assigning large tracts of country to certain individuals for the purpose of colonization, were unconstitutional, and calculated in their operations to deprive the citizens of Texas of their just rights, and that the terms annexed to them have not been complied with by the contractors—

The Legislature is prohibited from extending any further time to the contractors, or dispensing with any conditions attached to them; and they shall at their first session pass such laws as may be necessary to institute judicial investigations for the purpose of enquiring into and annulling said contracts, provided they are proven to be illegal and void, provided the actual settler already in said colonies, shall be guaranteed in their just rights to their quantum of land as settlers.

Mr. Mayfield offered the following amendment to the 21st section :

Strike out "but the rights to land of actual settlers already introduced in conformity with the terms of the contract are hereby guaranteed," and insert "provided always, that any actual colonist who shall be residing within the limits of any of the said several colonies at the final action of the United States' Congress upon this Constitution, and shall be engaged in the cultivation of the soil, or any of the mechanic arts, shall be entitled to the lands secured or attempted to be secured to him, her or them by virtue of said colonization laws or contracts."

Mr. Van Zandt said: I will submit a few remarks, Mr. President, expressing the views which I entertain upon this subject, and giving my reasons for the vote which I shall give. I look upon the question before us as one, in the consideration of which we should be governed chiefly by our nation's policy. I do not conceive it necessary here to inquire whether these contracts were originally constitutional or not. Nor do I think it necessary to proceed in the language of the substitute offered by the gentleman from Nacogdoches to declare our opinion that they are unconstitutional. I was much gratified by the opening remarks of the gentleman from Nacogdoches, but I regret exceedingly the conclusion at which he arrived. I prefer, so far as I am concerned, that the Convention shall adjourn and suffer things to remain as they are, rather than adopt this substitute. I believe that, in the latter event, we shall not only fail to reach the object contemplated, but, on the contrary injure both the country and the contractors themselves. What would be the effect of this section, if adopted? It would be this, viz: It proceeds first to give it as the opinion of this Convention that these contracts are unconstitutional and void. Now what effect will that have upon the settlers in the first place, those who have already been introduced?

At once it will render them dissatisfied, because it would devolve upon future legislation to say whether their claims shall be ratified or not. The effect upon future emigration will be to hang up all that portion of country; it prohibits not only surveys, but the introduction of other settlers. I do not believe, sir, that we should declare these contracts unconstitutional, without giving the parties interested an opportunity of being heard. If this course is adopted, what inducements can the contractors offer hereafter in bringing in settlers? In vain may they point to the statute book, if the Constitution has pronounced them unconstitutional. And thus a large portion of the country will be shut out both from surveys and location. I therefore object to the whole preamble, as entirely independent of the section, and ill-becoming in the Convention to adopt. I do not believe that at this time we have either the opportunity or the means necessary to a full investigation of these contracts, so as to say whether they are unconstitutional or not, or whether the contractors have complied in good faith with their contracts as originally entered into. If we had them before us, it might become us to give an opinion of this character. But under the circumstances, it is impossible for us to pronounce such a verdict. If called upon at this time to give a vote connected with a denunciation of these contracts as unconstitutional, I must decline giving it. I shall determine this question in one mode only: I regard it as a question of policy. What was the original object in view in authorizing these contracts? Our frontier was exposed to the inroads of the merciless savage; husbandmen were frequently called from their homes and their crops to defend themselves and the adjacent country; the country was desolated; the population was receding; and that region, which a short time before was in a flourishing condition, and bade fair to rival any portion of the country in actual prosperity and wealth, was soon to become a desolate wilderness. At this moment these individuals came forward, and offered to contract for the introduction of a certain number of families upon the exposed frontier, sufficient to give protection to the old settlers. I was in Congress when the law passed; and the question of constitutionality, so far as I recollect, was not even agitated. The only question then considered was one of policy, Is it policy to make it the interest of these individuals to introduce these settlers to stand there as a breastwork for the exposed settlements of the country? This was the question, and the only one. Now, the question arises, has this object been attained? If I am rightly informed, it has not. So far as the western contracts are concerned, I understand that the emigrants brought from foreign countries here, instead of being divided over the whole country, have been placed in one or two spots, in squads or villages, so as to afford no sort of protection to the frontier. As to the other contractors, I am told that they have introduced scarcely a single settler from any foreign country. It is true they have traversed the United States, and perhaps Europe, but I am informed that perhaps two-thirds of the colonists are men who

came here at their own charge, and of their own free will, and not on account of any inducements held out to them by the contractors. I understand that some of them were actual settlers here before. The gentleman from Fannin has very ingeniously read a certificate of the secretary of state, to show that a certain contract has been complied with. I will read the certificate. [Here Mr. Van Zandt read the certificate referred to.] Now, sir, does this come here as the certificate of the Secretary of State that these contracts have been complied with? No, sir: but two individuals, acting on behalf of the colonists, have certified this to the Secretary of State. Now, sir, does this prove that the Convention is called upon to act upon it and change its course, a course in my judgment called for by a regard to the welfare and safety of the country? I say that if this proves anything at all, it only proves that the contractors themselves say that they have done so and so. I hold then, sir, that these gentlemen, so far as the evidence before us is concerned, have not shown this Convention, nor has it been attempted to be shown, that the contractors have complied in good faith with their contracts. But I say, sir, that I do not conceive this matter pertinent to the issue. I admit the position contended for by gentlemen, that if these contracts were originally binding, and by the act of this Convention they are annulled or suspended, so as to prevent a compliance with them on the part of the contractors, they will be entitled to the premium lands claimed by them under the contract. I admit the position to the full extent, that if we prevent their compliance with the terms of their contracts, we are bound to pay them an indemnity; and if the courts declare that these contracts were constitutional and have been complied with in good faith, I am willing that they should have every acre which they can claim. I believe that the country would be benefited by giving them all their premium lands, and suspending the contracts in future. But I am unwilling, if any thing else can be adopted which will suit the case, to go that far. I believe that, under the circumstances, it would be sufficient to require these gentlemen to resort to the courts, and there prove before a jury that they have attempted to comply in good faith with their contracts; and I believe, if successful, they should be amply compensated, and no injustice done. So far as that is concerned, we can provide ways and means by which these gentlemen may have ample justice done them. I believe that, whether constitutional or not, these contracts were wholly inexpedient. They have failed to accomplish their ends, and through them great injustice has been done to a certain class in this country. I allude to that class of men who came here at an early period, and participated in our early struggles, at a time when our fate and destiny were not told. They came then, with the bold heart and ready arm to do battle in the cause of liberty and civil rights. They came here and breast the storm when at its height; and they are surely entitled to their reward. The government held out to them certain inducements, promising to give them a certain quantity of land on ac-

count of their emigration to the country, and a certain other quantity for actual personal services rendered in its defence. Then, if there is any contract existing, I hold that to be a contract as constitutional and legal as any which the government has entered into; and so far as the settlers are concerned, it is one which has been complied with and fully executed. I am unwilling to say to these revolutionary heroes of '36, you must go to the Rocky mountains before you shall have your lands, you shall not locate them near the settlements where the lands are valuable. I say, sir, that they have as much right as Peters and others, and a better; and believing that they have a better right, I am for giving them the precedence. I believe that injustice has been done them; and I believe it is the duty of this Convention to right the wrongs by others done. The objection has been taken, that if we adopt this section, we shall jeopardize the acceptance of our Constitution by the Congress of the United States. I apprehend no such consequence. Suppose it should be said there that we have attempted to interfere with vested rights. The amendment of the gentleman from Fayette provides that all those colonists who shall be here at the time of the adoption of our Constitution shall have their rights guaranteed to them. It will be provided also that the contractors who have claims against the government for their premium lands, shall have the right to go into the courts of the country, and there before an intelligent and impartial jury, establish their claims. What more could they ask?

Mr. Davis said: It seems to me, Mr. President, that we have to pursue one of two courses; either to let these contracts remain undisturbed, or to suspend them at once. For that reason I shall oppose the resolution offered by the gentleman from Nacogdoches, which proposes that the Legislature at its first session shall pass laws for instituting an inquiry to determine whether these contracts, in the first place, were constitutional, and if constitutional, whether they have been complied with. What, sir, will be the state of the country embraced by these contracts, during the investigation? The settlement of that country must be suspended; no individual can go there to settle in any security; and consequently the occupation of a large and valuable section, in all probability, will be suspended for years. It seems to me entirely useless to adopt the course suggested by the gentleman from Nacogdoches. It might be before the matter would be determined, and I ask again, what would be the condition of the country in the mean time? I am in favor of the section with the amendment offered by the gentleman from Fayette, and with some little farther amendment, which I think should be made. A great deal has been said in relation to the right and power of this Convention to abolish these contracts. A great deal of law has been referred to upon the subject, which is familiar to every man who has even a superficial knowledge of the laws of the country. But, sir, this Convention has powers, and can exercise powers which no common judicial

tribunal can take upon itself. A judicial tribunal cannot annul a contract; a Legislature cannot; but this Convention has the power to do it; and if it has the power, it can exercise it; and if it is exercised by this body, I say it is reasonable to suppose that it will be nothing but justice. I will ask gentlemen if the people in their sovereign capacity, have not the right to annul these contracts? I do contend, sir, that we have the right and the power; I will use the term here, the *right*, and in all probability upon this occasion we shall exercise that right. But, sir, we propose to go further, and if these contracts are annulled by a solemn act of this Convention, open the courts of the country to the contractors. We propose to permit them to enter the courts, and there investigate the merits and justice of their contracts; and if this Convention shall have done them injustice in suspending them, that the State of Texas shall remedy that injustice. It seems to me that the policy of the country requires the action. Sir, under what circumstances were these contracts made? They were made, sir, at a time when it was deemed important that emigrants should be brought into the country. Well, sir, I am willing to say that those brought into the country by the contractors shall receive some benefit from the contracts, and the contractors some benefit from their settlement. But, sir, what is the case now? It is no longer necessary for the contractors to make any exertions to obtain the number of individuals required of them.

Mr. Mayfield said: I have listened attentively, Mr. President, to the debate upon this subject, and I believe that every gentleman upon this floor has come to the conclusion that the objects sought to be attained originally in the creation of these contracts have failed to be reached, and also that the time has arrived when the people of Texas have a full and ample opportunity to speak upon this subject as justice, or right, and as the interest and true policy of the country may dictate. I believe with the gentleman from Nacogdoches, that by virtue of these contracts, the heirs of the soldier, whose bones lie bleaching upon your prairies, are deprived of a privilege they are entitled to enjoy under this government, that of the selection and location of the lands belonging to them. I believe also that he who came to the country at an early day, relying upon the faith and promise of the government, is, by virtue of these contracts, which have not been carried out or attempted to be carried out in good faith, deprived of the right of locating his lands upon a portion of our territory which honesty and true policy entitle him to locate upon. I believe also, sir, that since the year 1841, every movement which has been made upon this subject, and particularly the acts of our government in 1843 in relation to these contracts, has been based upon bad policy, and in some instances, upon absolute fraud. I believe further that the time has arrived when the people have the power to check the operation of that policy which has been so deleterious in its effects. I believe that the period has arrived when the people in their majesty and power have the opportu-

nity of checking and putting down a fraud which has been attempted to be perpetrated upon the country, yes, sir, a grand and stupendous fraud. I hold too, sir, that the power of this Convention is ample and complete to speak even judicially upon this subject, and I believe in the propriety of such a course.

With regard to the action of the government in relation to these contracts, I would remark that most men in this country when they speak of the *government*, seem to consider all power as concentrated in the chief magistrate of the state, and the cabinet provided for by law. Such has been the sentiment of the people in former times, that the term *government* has been understood to apply exclusively to Sam Houston and his cabinet. But, sir, that day and hour have passed. They no longer constitute the government; the people in their might and majesty constitute it. They, sir, have undertaken the accomplishment of the great measure of annexation, and in the accomplishment of that measure, they have called upon their representatives to check 'the evils brought' upon them by that government. The time then has arrived in which this country can do justice to that class of her citizens who have contributed the most to maintain her institutions, and at the same time relieve herself from the operation of a policy which can bring nothing but disgrace, poverty and wretchedness upon your state.

This section will arrest the progress of the evil, and prevent the grasping speculator from sapping the foundation of your institutions in his endeavors to become rich at the price of the labor of the honest cultivator of the soil and the *bona fide* emigrant. We only seek by the principle to be incorporated in this section, to cut off these harpies, who neither work nor labor, nor earn an honest living by the sweat of their brows, whose hands have never been trained to any honest employment, and confer the benefits of the state so far as we can upon the real cultivator of the soil. I entertain the sentiment that the first revolutionary patriots of this country were just men: and when, in the Constitution of '36, they declared that certain colonization contracts were in violation of just principles and derogatory to the true policy and interest of the country, and therefore should cease to have effect from and after that time, I look upon them as having been then actuated in some degree by the patriotism which animated them upon the field of battle. I believe they hoped and expected by a declaration of this kind to secure the honest emigrant in his rights, and to rid themselves of the speculators swarming around the halls of legislation of your country. Those men, sir, who had fought from the first origin of the revolution up to that period in defence of their country, and then held themselves in readiness to leave that assembly and again bear their bosoms to the enemy, were the first to put the seal of disapprobation upon schemes of this sort. I hope, therefore, that upon an occasion like this, those who have read the history of the past, and have seen the benefits which have been conferred upon the country by checking these contracts, which at the time occupied the entire territory

of Texas, will not now continue the operation of contracts equally as deleterious to the public interest and opposed to true policy.

The objection which I have to the substitute of the gentleman from Nacogdoches, is this: it does not, I think, reach the question. It imposes it upon the government as a duty first to institute suits against these people, who, in the language of the gentleman's substitute, have entered into a contract unconstitutional and impolitic in itself. I desire, for my own part, if such be the state of the facts, to impose upon them the obligation and necessity of filing their bills in equity, and setting forth the allegations upon which they rely. I say, sir, if they are equitably entitled to any indemnity under the terms of this section, let them as honest men will not object to do, swear to it. But by the provisions of the section as offered by the gentleman from Nacogdoches, or that proposed by the gentleman from Galveston, it is made the duty of the government first to institute suit, and against whom? Against men, sir, or at least some men, who, as all admit, have entered into contracts made in collusion and fraud; I care not whether the fraud has been upon their part or upon that of your government, they have entered into fraudulent contracts. Can we, sir, with propriety, impose upon the people the necessity of instituting suit against men who have been thus guilty of collusion with your government, Sam Houston and his cabinet [though not all of them, I hope]? No, sir. If they have entered into these contracts with clean hands, if the parchment under which they claim is without blot or taint of fraud, they will not be endangered by appealing to the independent judiciary of the land: their rights under the provisions of this section will be fully maintained, and the decree of the court will give them all they are equitably entitled to. And they have the advantage in the litigation, though fraud may exist. Because, so soon as they show their own hands clean, then, sir, the principle of law alluded to by the gentleman from Nacogdoches will apply in their behalf, that they shall not be jeopardized or injured by the act of the government, and if it is the government which has acted fraudulently, the courts will be obliged to construe the contract in their favor. Such is the principle of law and justice. They will not be injured, but even the act of fraud itself will thus in some degree insure to their benefit, if unconnected with their own acts.

I desire to see this section pass. I am willing to vote upon this occasion to declare these contracts unconstitutional; and I further wish to secure to the *bona fide* settler and cultivator of the soil all the rights which he would have had if the contracts had been carried out in good faith. By doing this, I think we shall not prejudice the rights of any who are entitled to locate their lands upon the public domain.

I have been informed by surveyors of the country, and I believe the records of the land office will show, that men have been precluded from locating in a portion of the country not occupied by any settlers whatever, but in which only lines had been run, and sections laid off under a

colonization contract. Now, sir, is it just that those who fought on the plains of San Jacinto, and the heirs and representatives of those who fell at the Alamo and with Fannin, and those whose bones lie unburied at Goliad, should be precluded from locating upon the soil of the country, and that too upon territory merely blazed and run off, and waiting the introduction of emigrants under these contracts? It seems to me a violation of the public faith, an act of abhorrent injustice. And as an occasion has presented itself, when, as I believe, all the evils connected with these contracts can be remedied without doing injustice to any, and without infringing any principle of international law or justice, I think it is time that the people of Texas should speak out and place this matter beyond cavil or doubt.

I think the cases cited by the gentleman from Nacogdoches and others have no application here under the circumstances. This act on our part, is not that of a mere co-ordinate branch of the government, but it is an act of the deputies of the people in Convention assembled, and we refer the subject entirely to the people. It is a kind of adjudication frequently called for by the peculiar circumstances and policy of a country, and one to which so many judicial decisions can apply. In doing this, sir, we shall commit no act of manifest injustice, but shall only perform that which we believe justice and the true policy of the state demand at our hands, in behalf as well of our present population as of those who may follow after them. Unless the Convention act upon the subject in some form or other, what will be the state of things presented? Here will be vast tract and extent of country which, it seems, is already marked out for the emigrant who has not yet left his home in Europe, held up from the operation of the laws. The Legislature can make no disposition of it for the payment of the public debt, or common schools, or any purpose which the interest or prosperity of the country may dictate. And this is to be the consequence, first perchance we may be doing injustice—to whom? To men who have entered into contracts in violation of law; of palpable and abstract justice, and of the Constitution of your country, and who are seeking to enrich themselves, and at the expense of whom? At the expense of the country at large; at the expense of the representatives of the deceased soldier and patriots; at the expense of every honorable and chivalrous sentiment. Sir, the true policy of every state is to secure first the protection of its own citizens, and an equal and proper disposition of lands to those who will devote the labor of their hands to the cultivation of the soil.

Mr. *Ochiltree* said: I had intended, upon this occasion, Mr. President, to cast a silent vote without mingling in the discussion. But since the gentleman from Fayette has presented a new issue, every feeling of my own, every principle upon which I act, forbids me to be silent. I am called upon as a juror, without evidence and without law, to pass upon the honesty and proper motives of a man whom I glory in calling

friend—Sam Houston. * He is directly accused of being a party to a stupendous fraud. And this Convention is called upon without law and evidence, without the form of trial, to give their verdict and publish it to the world. For this issue I am not prepared. If a fraud has been committed affecting the rights of the people of Texas, I want the case tried, sir. If I have pressed a man to my bosom and called him my friend who could be guilty of an enormous crime, I want it known. If he has been a party to this great criminal transaction, by which the rights of the war-worn soldier have been bartered away; if he has committed an offence which would stamp him as a felon throughout Christendom, I want it made to appear in characters so distinct that every man, woman and child may read and pronounce his deep damnation there. This is the issue now presented before this House by the gentleman from Fayette. If he believes that such a fraud has been committed, he is justifiable in making the charge; but if I consider it unfounded, I am also justifiable in repelling it. If Sam Houston is guilty, I want it proven; if proven, he is stamped a villain: but if not, he will do as he has often done before, rise triumphant above the petty attacks of his enemies. Sir, if he is tried and convicted, it will not be the first time that he has been tried and convicted by his enemies; but thank God there is a great appellate tribunal which has universally sustained him, which has never yet failed when appealed to, most triumphantly to vindicate him; and in my opinion, though not a prophet or the son of a prophet, that tribunal will do it again. Yes, sir, if he was the government, if his oracles were heralded forth to the world as the laws of the country, he will soon be the government again, and all the powers which can be brought to bear against him, in my opinion, cannot prevent it. All that I want with regard to this matter, is that it should be tried by the judicial tribunals of the country. I am willing to go as far as the farthest in protecting the rights of the citizens and early settlers from trespass. I believe that contract, however, does not prevent any location made before the entrance into the contract. Believing this, I shall vote for the proposition submitted by my colleague from Nacogdoches; although I do not like its features, I do not like its "whereas," or that this Convention should hold a menace over the tribunals which are to adjudicate the rights of individuals. But I will vote for it, believing it the best that will be offered. I want the courts to try and adjudicate these cases; I want them to inquire into the facts, to read the law and hear the evidence. If a fraud has been committed, it has not been by Gen. Mercer alone; it is a double fraud. Whenever it shall be so pronounced by the judicial tribunals of the country, I will then believe it; I will then acknowledge it, but never until then. Let us not, without law or evidence, and upon mere *ipse dixit* of those who, however honest, are evidently governed in some degree by their prejudices, adjudicate this matter in the Constitution. Let it not be said that this body, selected for intelligence, honesty and patience, and sent here not for the purpose of

stamping felony upon the parties concerned in colonization contracts, but for the purpose of forming a just and beneficial organic law, have thus abused the powers delegated them by the people. But let us investigate the subject calmly, and leave the decision of the matter to the courts where it belongs: let the judges pronounce upon it; let the legislature be called upon to impose every restriction in future, and be prohibited if you will from extending the time of these contracts; let the parties be cited to appear at the next term of the court immediately following the adjournment of the Legislature, and if they do not appear, let judgment go by default, and let their contracts be pronounced null and void. But I want a fair chance given them to defend themselves. In giving this, there is no injustice done to any; it is what I am always willing to accord to friend or foe; and "let justice be done though the heavens fall."

Mr. *Mayfield* said: I think that it is not the issue before this Convention. It was asserted by a gentleman upon this floor, that a fraud had been committed upon a certain occasion, but he contended that it had been on the part of Charles Fenton Mercer. If, then, I argued, it was true, as he insisted, that Charles Fenton Mercer had been guilty of a fraud upon the country, whereby a large portion of the public domain was to be wrested from the heirs and descendants of those who had fought as gallantly as Sam Houston upon the battle field, it was equally true that Sam Houston himself had been a party to it, because he signed the contract, as I understand, conjointly with Charles Fenton Mercer. Then I only draw my conclusions from the statements of a gentleman I believe equally as devoted to Sam Houston, although perhaps not capable of passing as high an eulogy upon that gentleman, as he is himself. Nor, sir, is the position he assumes correct. He indulges in a sophistry which is not just. The true principle is this: Go to the history of the times and of a people; that establishes at all times a fact, sir: it justifies their action upon any great measure which may affect their prosperity or safety. And when the welfare of a people is involved, when the policy of a State is jeopardized, when the rights of the heirs of the war-worn soldier are to be taken from them, then, sir, the concurrent history of the times; the pages of that book which chronicles day by day, the actions of your rulers and the administration of the laws, form a volume of testimony; upon which the people are justifiable in acting at any time, without awaiting the slow and tardy operation of the organization of courts of justice to pass upon questions momentarily affecting their rights and liberties. Why then would you postpone the adjudication of this question, when the people in their majesty and might occupy their places here in the persons of all those who hold seats upon this floor?

Sir, the gentleman from Nacogdoches is wrong, if he believes that Sam Houston and Charles Fenton Mercer were not equally participa-

tors in this matter. Do not the history of the proceedings, the veto recorded in the journals, the very documents exhibited upon this floor, show conclusively that this contract was entered into after the voice of the people had declared it impolitic longer to continue the system? And are we then, sir, passing judgment upon a question in relation to which the facts are not known? Why defer the trial? Where are the just and high grounds for referring this subject to another tribunal than that of the people themselves? And we are here as their representatives. I for one feel all the responsibility imposed upon me as such; and I can see no just grounds for referring the trial to any other tribunal. I believe that the case is fully made out. I believe that all the testimony which can be adduced is now fully before this Convention. There is the law on the table, there the journals of Congress, there the veto of the President, there the contract in black and white. What more can the gentleman adduce? If, then, I am sitting here as a juror, the gentleman will state any other point of evidence which he wants, I will grant him time to send for persons and papers. But let us not postpone the investigation unless there are just grounds for the delay. Are not the people as capable of determining this question through their delegates upon this occasion, as a court of justice will be hereafter to be established? This question has been before them for years. They have spoken upon it through the Legislature of the country, and they desire now again to speak upon the subject here. And all I ask, so far as I am concerned, is that justice may be done to the country, that the equitable rights of her citizens may be maintained, and that a policy which has been found to be deleterious to her interest and prosperity may be checked.

Now, so far as the opinions of the gentleman with regard to the individual alluded to are concerned, I care nothing about them. The gentleman from Nacogdoches says, he has been his bosom friend; that he would take him to his bosom, and be proud to call him friend. If such be the fact, possibly the gentleman is not deceived with regard to this transaction. But I do flatter myself that the country at large has been deceived. Because that individual was advised by friends perhaps as warm and devoted as the gentleman himself, of the impropriety of entering into these contracts. If the gentleman has not been deceived, others have been most egregiously and outrageously deceived. But with the merits of this question, these matters have nothing to do. The gentleman knows as well as myself the course I have adopted with regard to that individual. I care not whether he may triumph over his enemies or not; I care not if he shall become the great polar star of this country or any other: it is immaterial to me; it is a matter of indifference to me; and if such be the fate of that man, I would not envy the gentleman the nearest association possible with him. But this has nothing to do with the great and permanent interests of the country; and I care not what may be the destiny of

Sam Houston or of those who may cling to his skirts through both good and evil reports. I occupy the position I do without regard to him: and it calls upon me to give a voice and express opinions in my judgment best calculated to promote the true interests, prosperity and glory of my country. I care not whom or whose associations they may affect.

Mr. *Ochiltree* said: I attach myself, Mr. President, to the skirts of no man. But an interest sure of justice, would, I trust, always prevent me from wronging any man; and I assure you, sir, that I would stand as fierce a champion of the gentleman from Fayette, or any other individual in this Republic, were censure to be thus cast upon him without the semblance of trial, as this day it has been cast upon Sam Houston. Sir, I profess not to be his champion: he needs none: he stands too far above the list of competitors to demand a champion in me. But as I have said before, I know nothing in the world with regard to the right or wrong of this transaction. I have never made myself conversant with the facts of the case: and when I was elected by the citizens of Nacogdoches county, this question entered not into the canvass. I was not sent here to disturb vested rights, if such there were, nor to interfere with the smooth and even current of justice and of right: but to frame a Constitution which should preserve, unimpaired, our great liberties and immunities; to form an organic law, which we might hand down without a blush or tinge upon the cheek to our children and our children's children. I was not sent here to make war upon any particular interest, however hydra-headed: I am not a Hercules, nor would I wish to apply the brand or searing iron. All I ask of this Convention is, not do that in a moment of feeling which might be hereafter a blot upon our escutcheon. Why, sir, have we said in the Bill of Rights that every man shall apply for justice and right to the judicial tribunals of the country? The gentleman says, that we have all the wisdom before the House; I do not think so. We have said that the accused shall have the right to summon his witnesses, to confront his accusers, to be heard by his counsel, and shall not be subjected to a summary process. This is all that I ask; and, sir, do I ask too much, when I stand up here among the assembled representatives of the people of Texas and say to them, act not rashly and hastily upon this subject? There may be a badge of fraud: I shall not attempt to deny it; I know not enough of the matter to give a vote upon this occasion. But if I beg only this much, only the more forcibly is the individual alluded to called upon to rid himself of the charge brought against him. All that I ask, all that I have asked, all that I will ask for Sam Houston or any one else, is that he may have a fair chance before the tribunals of the country. When *Belissarius*, the renowned Roman General, who had so often led the armies of his country to victory, who had driven the enemy from the very gates of Rome, and brought the banners and standards of conquered na-

tions to pile up in the capitol, when from being the possessor of a great fortune, he came to wander a beggar in the streets of the Imperial City, as the story goes, he solicited the charity of the passers by in the simple words, *da Belisarius obolum*, give Belisarius a penny. All that I ask for Sam Houston is, that he may have justice.

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

4 o'clock, P. M.

The convention met pursuant to adjournment.

On motion of Mr. M'Gowan, Mr. Moore was excused from attendance on the Convention on account of sickness.

The 21st section of the General Provisions, together with Mr. Mayfield's amendment, were taken up.

Mr. *Lipscomb* said: In stating the reasons why I cannot support the section as reported by the committee and amended by the gentleman from Fayette. I will remark, that it is with exceeding reluctance that I shall vote against the amendment and the section. But I am influenced in so doing by considerations which will not allow me to indulge any preference or any freedom of will which I might be disposed to exercise upon this occasion. It has been a principle with me, which has grown up with my growth, and I believe increased with age, to have something like veneration for individual rights. I believe that those rights, in all countries, governed by law, should be subjected but to one test, that of the ordinary tribunals of the country. I believe that any other mode of adjudication is capricious, and subject occasionally to very great injustice. I have been accustomed to think that whenever a tribunal decides any matter of controversy, it should hear both parties, and weigh the evidence on the one side and on the other. We are called upon here to say, that these contracts, solemnly entered into between the Republic and these individuals, shall be suspended and shall cease, thus directly destroying the contracts, and directly interfering with individual rights. I do not believe that we could, under any circumstances, go into the inquiry whether these contracts were founded in fraud or not. The gentleman who addressed the House in favor of the amendment, sustained it upon the ground that fraud in the beginning made them void *ab initio*. I am willing to say that they are fraudulent and void for the sake of the question; but if I were of that opinion, it would not justify me, standing here as a member of a Convention called for the purpose of forming a constitution embodying the great principles of the rights of man that they were so. All we could do would be to provide a mode of instituting an inquiry as to that fraud. It is wholly immaterial whether they were

fraudulent or not, whether constitutional or not. We are not sitting here to decide upon the constitutionality of any matter. In all countries governed by law, there is an appropriate manner for doing every thing.— This course could only, it seems to me, be sustained upon the ground of expediency; and with regard to its expediency, there might be much difference of opinion. Perhaps we have all power in our hands, as to sheer power; but I deny the right we have to interfere with the rights of any man, without giving him a hearing, and an opportunity to defend those rights, by due course of law. In the section preceding, which we have adopted, we assert and sustain this great principle. I will read and call your attention to it:

“Sec. 20. The rights of property, and of action which have been acquired under the legislation and laws of the Republic of Texas, shall not be divested,” &c.

I voted for the 20th section as it passed, not believing it would give any constitutional or legal effect to the principle there declared, but merely as a declaration of the great principle which should prevail in all countries, that vested rights should not be interfered with. And now, in the very next section, we are called upon to divest a right. We admit it to be a contract, and are called upon to say it shall be suspended and cease. With all due respect to those who drafted and sustain this section, it does appear to me inconsistent and unfortunate that the two sections should be placed in juxtaposition, so that he that runs may read. It militates against this great principle which we hear asserted and declared to the world, and against the morality which should enter into all considerations of this sort.

There is another objection, which is with me a prominent one. It will not be denied by any member of this House, conversant with constitutional laws, that if we were already in the Union, and should offer an act of the Legislature or the State, embracing this very provision, no constitutional lawyer would say that act would be held to be constitutional by the Supreme Court of the U. States; any lawyer would say it was void, unconstitutional and void. We are told, however, that we are not yet in the Union, and may engraft into our Constitution a principle repugnant to that of the U. States with perfect safety—that there is no power that can revise it—that the Supreme Court cannot revise it.— I do not think so. I believe that if we should be received, and if there should be any principle in our constitution conflicting with that of the United States, it will come under the cognizance of that court, and be declared unconstitutional. But suppose we hold that it would not be subject to the revision of the Supreme Court, and that, if we go into the Union now, it cannot be questioned hereafter. Are there not just grounds to believe that those in the U. States Congress, who are opposed to the annexation of Texas, as one party, and those who may conscientiously

believe this principle repugnant to the constitution, as another party, may, when acting together, (for we have not many friends to spare in the Congress of the U. States,) form a sufficient force to defeat our annexation? Why so? Because this section is repugnant to an express provision of the constitution of the U. States. The latter clause of section 10th, of the first article of that constitution provides that no State shall pass any law impairing the obligation of a contract. Now, is it within the bounds of a reasonable probability to suppose, that those men who feel indifferent towards us at the least, and those who may conscientiously believe this to be in violation of the constitution, would not seize hold of this provision and make it an objection to the reception of our constitution? Would they receive our Constitution under these circumstances? Would they take in a people as an independent State, who should have engrafted in their constitution a principle repugnant to that of the U. States? I think they would not. On a former occasion, I declared that I would put it to myself, and I believe that as good a way of reasoning as any other, what I would do under similar circumstances. And my best reflection and candid investigation brought me to the conclusion, that if I were a Senator or member of Congress, and unfluenced by any feelings for Texas, I should say I would not receive this constitution—that I would vote for rejecting it, if it contained that provision. Now, believing as I do, that annexation is paramount to every other consideration but that of power, I would make any other sacrifice to obtain it, and this, if I am not mistaken, is the prevailing sentiment of the people of Texas; they will risk any thing short of disgrace and dishonor. Some gentlemen say these contracts were void *ab initio*, and, therefore, not contracts; and yet they call them contracts in the very declaration. This provision says, they shall cease, and that it as much destroys their validity as if it should say, they shall be void. Believing therefore that we should jeopardize our admission into the Union with this constitution, no consideration could induce me to vote for this section as reported. And I have the same objection to the amendment. I will go as far as any one can, who entertains the same opinions that I do, to have these contracts arrested by due course of law if they have not been complied with, or if unconstitutional. I am willing to enjoin it upon the Legislature, that they shall not extend their time, and that they shall not relieve the contractors from any forfeiture which they may have incurred. I will be for enforcing the contracts to the letter. But let the courts do that—let us not attempt to do it ourselves, hearing, as we do, only one side of the question. I am opposed to repudiation in any shape. If we have got into difficulty, let us not violate the public faith, but sustain our honor and keep it untarnished, though we should be impoverished thereby. Strong appeals have been made to our sympathies. We have been told that these contracts violated the rights of the soldier, of the widow, and the orphan, and of the early settler, who assisted us in defending the country against the public enemy; that their rights

have been postponed to the rights of new comers and contractors who have come here for mercenary purposes. If so, great injustice has been done. But let this matter come before the proper courts, let them inquire into it; and I have full confidence that they will say that those contracts which violated previously existing contracts were void on that account. I do not know the extent of the influence possessed by these contractors, but I fear it. In fact, I fear every thing when a question can be raised upon the acceptance of our constitution. The character of one individual, whose name has been handled very roughly to-day, once stood very high in his country's annals; few men have stood higher for virtue, talent and political influence than Charles Fenton Mercer.

If he had that influence now, and we should undertake to rescind his contract, we cannot expect that he will not attempt to prevent it. The influence of all those opposed to us will be combined, and we know from the newspapers that the northern people are opposed to our annexation, and are looking out for something to take hold of. It is true they are not looking in this quarter: they are looking for something relative to slavery—but the same men will lay hold of any other objection just as soon as that. Their object is to defeat the annexation of Texas, and they will defeat it if possible by availing themselves of all the means within their reach. And I can tell gentlemen, as lightly as they think of this matter now, they may think of it hereafter with regret; as I know that most of those who are now supporting this provision are devoted to the cause of annexation. I had intended to rest content with giving my vote against this section, without making any remarks upon the subject, but the more I have looked at it, the more fully satisfied have I become that it is repugnant to the constitution of the U. States, that it is in violation of the principles of abstract justice, and would be a ground for our rejection; and I felt it my duty to give, in a brief way, the reasons why I shall vote against it.

I will remark here, with regard to the provision alluded to in the constitution of the Republic of Texas, that our situation is different from that of the body alluded to. That convention was making a constitution for an independent people; and there was no power which could revise its acts. It is not so with us. We are forming a Constitution to be subject to the Constitution of the U. States, and I do hope that we shall carefully avoid inserting any thing here which may be repugnant to that instrument.

Mr. Baylor said: As I shall be called upon in common with other gentlemen of the Convention to give a vote upon the section under consideration, I think it my duty briefly to state my reasons for the vote I intend to give upon this occasion. As we often see, sir, upon questions of the greatest magnitude and moment to the country, individuals distinguished for their age and experience come to very different conclusions.

I have no doubt myself that these conclusions are honestly entertained, and I have a great respect indeed for the opinions of those who differ from me upon this occasion. I have known some of them long, and in their integrity I have the greatest confidence. And I trust and hope that I have as high a regard for the sacred nature of the obligation of contracts as any other; and I fully accord with the sentiment that they ought not lightly to be touched: that they ought not lightly to be annulled, cancelled or set aside. Nothing short of the highest necessity, a necessity, sir, imperious in its character, ought ever to induce a deliberative body to place their hands upon a contract. I do not myself view this question as some gentlemen have done. For I do not think that the question of fraud has any thing to do with the case now under consideration. I hold, sir, that, in the absence of all proof and all investigation of the subject, the presumption ought to be indulged by every gentlemen upon this floor, that, so far as the contractors are concerned, they have acted in good faith, and honestly complied with their contracts. So far as fraud is concerned, it is a well established and settled principle that we never can presume it. We are not authorized to go into the field of conjecture; fraud is a question of fact, and like all such questions, the fact must be proved. It consists in the intention; and I say that, in the absence of all proof, I am disposed, so far as I am concerned, to come to the conclusion that these individuals may have complied in good faith with their contracts up to the present moment, and to suppose that these contracts were made in good faith, and that there has been no fraud in the case. At least I am charitable enough to come to these conclusions until I see some facts or developments to authorize a different opinion. But I am disposed to look upon this question as one of policy, as one of a case of necessity. So far as I am able to judge of the matter, if we suffer these contracts to remain as they are, the consequences to the country will be distressing in the extreme. If we take into consideration the number of these contracts, the immense districts of country which they sweep over from the Rio Grande to the extreme line of the frontier between us and the United States, if we contemplate for a moment the vast amount of territory embraced within this entire mass of contracts, we shall find that these individuals are getting a scope of country sufficient for at least two, if not three states. Well now, by the terms of these contracts as I understand them, the contractors and their associates are not bound ever to alienate these lands; but they and their successors can hold them through all time to come. We have not acted as wisely in this as the Mexicans, of whose policy and wisdom we have so poor an opinion. They took this precaution to say that the Empresarios should, within twenty years, sell the larger portion of their premium lands. Here they can hold them for all time to come. What an attitude the country will be placed in, a few individuals and their successors owning entire sovereign states? Will the consequences not be most distressing and ruinous? Look for a moment at the

State of New York: see the riots and disorders, the feuds and contentions which have grown out of a similar state of things there. The venerable gentleman from Washington tells us that he is extremely solicitous to maintain the national faith of the country. I too, wish, so far as concerns the course of Texas, that her steps may be directed by a regard to the nicest principles of honor. While I accord with that sentiment, and would be as far from favoring repudiation as any gentleman, I do not conceive that the doctrine of repudiation is at all involved in the proposition now under consideration. For if I understand the history of this subject, it is this: that those repudiating states, in their madness and folly, have borrowed large amounts of capital in Europe and elsewhere, and seeing that they have got into difficulty, now contend that they ought not to pay the money at all. Is that the proposition before us? We simply say that we believe these contracts will be ruinous to the country; that justice and policy call upon us to cancel them. But do we not at the same time give the emigrants their lands, and say to the contractors that the halls of justice shall be thrown wide open to them, that they may get ample compensation for the amount of damage they may have sustained? Gentlemen say it is true that the Convention may have the abstract power to do this, but they deny the right. Now, so far as I am informed, the powers of a Convention have never been well defined. We are thrown back upon the principle that we are here representing the majority and sovereignty of the people. We are acting upon principles superior to any Constitution; principles above and beyond all Constitutions, because we are framing the fundamental law of the land, the Constitution itself. While I make this remark, I wish it distinctly understood that I believe that neither this Convention nor any other deliberative body can ever feel itself authorized to act in any other way than as governed by the great principles of right and wrong. There is a moral fitness in things, which every body, and which this Convention are bound to respect, if just men. While I subscribe to this principle, I do not see that we are interfering with it or transcending our powers, in annulling and setting aside these contracts. Because we say that we will give the emigrant all that he is entitled to, and throw open to the contractor the courts of justice, that he may recover any amount of damages he may sustain. The gentleman from Washington attempts to draw a distinction I am totally incapable of myself. It will be recollected that the Convention which sat at Washington annulled two gigantic contracts. Well, he tells us that the United States has agreed to take us into the Union with this feature boldly standing out in relief upon our Constitution. That government cannot complain then if we perpetuate the annulling or setting aside of these contracts. I cannot see the force of his argument. He attempted to draw a distinction between the case of a sovereign people framing a Constitution for an independent state, and that of one coming into the Union with a Constitution subject to a paramount Constitution. But I contend that there

is no soundness in the argument, to say that though the government of the United States saw that the Convention at Washington had annulled these gigantic contracts, it supposed for a single moment that we would perpetuate this violation of contracts under the Constitution we are now framing. Because, if we do it, to set aside the contract of Mason under this new Constitution, is just as much a violation of the principle referred to, as to set aside that of Peters, Mercer, or any body else. The only difference is, that in the one case we are perpetuating the violation of contracts by a former Constitution; we re-enact this violation in the new Constitution, and continue the evil. That is the only difference. For so far as the proof is concerned, with the exception of the mere declaration of the old Constitution itself, this contract of Mason's may be just as good as any since made. I cannot see any difference. It seems to me, Mr. President, to be the true policy for this Convention to annul these contracts. But, sir, in doing so, I hold that we ought to be governed by those principles of justice and liberality which ought to characterize any good people. It is in vain, because they have been made, to now say that they are impolitic and ruinous to the country. If so, it was folly and madness to make them. And for aught that appears, if we had not annexation, they might be very politic; it might be very important to have this vast wilderness settled up by those who could defend the country. But inasmuch as we have annexation now, the whole policy of the country has changed. A friend requests me to take some notice of the constitutionality of the section under consideration. Now I believe there is no constitutional lawyer here who does not know, that when a state is admitted into the union, its legislature has no power to annul contracts. From the case of Dartmouth College down, all the decisions go to the same point, that a Legislature has no power to set aside contracts. But if we look at history, we shall find that they have generally done so, without granting any compensation, or furnishing the party with any means of resorting to the courts of justice to get adequate compensation. They have repealed those corporations without making any adequate or just compensation. But I hold that there is a wide difference between a Legislature doing this, and the people by their deputies assembled in Convention. The Constitution of the United States says that no State shall do this thing;—and I suppose Texas is not a State yet. It does not say that no convention shall do it. Let me ask, sir, for what reason we have incorporated in our constitution a section providing that private property shall not be taken for the public use without adequate compensation? It is based upon the idea that the public good may require such sacrifices to be made, and that private interest must yield to the public good. Where is the difference between thus taking private property and annulling such contracts as these, if we make a just compensation? I can see no difference. Here we propose to do no more than to annul these contracts, and opening at the same time the courts to these individuals, that they may receive a just

compensation if injured thereby. I do not perceive that the Constitution of the U. States will be injured by this measure, and I would myself, so far as I am individually concerned, be perfectly content to place in the constitution a clause that nothing therein contained should be so construed as to contravene any provision in the constitution of the United States. Then the anticipated crusade against our constitution in the Senate and the lower House would be met at once by this sweeping and general clause, and we should have ample scope for our deliberations, and full power to adopt any principles which the happiness, well-being and true policy of the country may imperiously demand. In any view I can take of the matter, it seems to me that these contracts ought not to continue in existence. I should be perfectly willing to consider them as having been complied with up to the present moment. I am willing to give the contractors the premium lands to which they are entitled up to this time, and something more. The resolutions of the Congress of the U. States give us the entire jurisdiction and control over our domain. They calculate that it will pay our public debt, and say that we may dispose of it as we think proper.

In conclusion, I wish it distinctly understood, that I do not wish to do any thing which might be considered unjust or illiberal so far as the contractors are concerned; but I never can consent, as a humble representative of the people to suffer cancers like these to remain upon the body politic; for one, I have the nerve to apply the caustic and the knife, and hazard all the consequences.

Mr. Howard said: Mr. President, that which distinguishes the government of civilized from savage life, is its respect for rights. With the barbarian might makes right; but it is the boast of civilization, that by a government of laws wisely and uniformly administered, protection is afforded and justice administered equally to the strong and the weak. But when government is diverted from this end into an engine of opposition, and individual obey, it degenerates into tyranny and becomes a curse.

It is proposed by an arbitrary edict of this Convention to abrogate and annul the contracts for colonization into which the Republic has heretofore entered. It is urged, that, we should pursue this extraordinary course: 1st, because these contracts were unconstitutional; 2d, because they were fraudulent; and, 3d, because the public policy of the country has changed since they were entered into.

In order to support this measure, the advocates of it have found it necessary to maintain that this Convention has power to do all things, unrestrained by any rule save its own notions of expediency. I deny this position at the very threshold of the inquiry. The idea of unlimited power has no anchorage on this side of the Atlantic: it is associated only with the bowstring of the Sultan, and the knout of the Czar. To maintain such a position is to confound right with brute force.

While it is admitted in the discussion, that the Legislature, even in the absence of a written Constitution could but rightfully exercise such a power, it is insisted that this Convention, as the depository of all the people, has no limit but its discretion. I deny the position. The Convention, as the depository of political power, can, in the nature of the case, possess no more power than a majority of the people. Admitting for the sake of argument, that the people have delegated all their governmental power to the Convention, the power of the latter cannot exceed that of the people, which is the right of the majority to adopt such measures as will ensure the peace, security and happiness of society. Whatever may be the brute force of the majority, I deny its power as a question of right, under the pretence of governing, to adopt such measures as tend to the dissolution of society and the destruction of social order. I maintain, that government, whether the ultimate sovereignty be lodged in the hands of a few, or the whole people, has no right to violate the laws of nature or the social compact. When man submits himself to the laws of society and government, he surrenders so much of his natural liberty as the legitimate ends of society and government require; but he does not yield that which would be destructive of all society and his own existence. In England, where the Parliament is declared omnipotent, it is a well settled axiom of the law, that a statute contrary to the law of nature is void, and need not be obeyed [1]. Nor is this the mere speculation of the philosopher in his closet. It is a part of the jurisprudence of the country. In the cases of *Calder & Bull*, *Fletcher & Peck*, and *Terset & Taylor* [2], the Judges of the Supreme Court of the United States hold that a law violating the social compact, or natural justice, would be void on general principles, independent of constitutional inhibitions. And, the illustration they put are the cases, when the Legislature should declare an act criminal which was innocent in itself; or make a man a judge in his own case; or take the property of A and give it to B, all of which they say would be void on general principles without the aid of the Constitution. The great commentator on American law, asserts that the right "to acquire and enjoy property, is a natural right;" [1] *Burlamaqui*, declares, that, though the Legislative be a *supreme*, yet it is not an *arbitrary* power; but on the contrary, it is limited in several respects. Again, he says, the sovereign has rights "over the estate of his subjects principally in three different manners." The first is regulating the use of it by law. The second, raising subsidies and taxes. The third is the right of the eminent domain. It should be recollected that the author is treating of the exercise of power in monarchical governments. It is certainly a singular opinion, that government, in a country of written Constitutions is less restricted than in absolute monarchy; or that the majority of the people

1. 1st Co. Litt., 341, a; 1st Bl. Com., 58, 41, 43; *Legal Maxims*, 17.

2. 3d Dallas, 386; 6th Cranch, 87; 9th Cranch, 43.

may tyrannize through the means of the majority to an extent beyond the recognized power of the Tudors in an age of absolutism. If so, we have made but small progress in the science of government on this side of the Atlantic. Oppression is but sanctified because done in the name of the people. The two first grounds assumed for annulling these grants are, that they were fraudulent and unconstitutional in their inception. It is not denied that these are purely judicial questions; but it is said that the Convention possesses all power, if it sees fit to exercise it, legislative, judicial and executive. Be it so—if it proceeds as a court, it must clothe its proceedings with judicial powers. If it proceeds to annul a grant on the ground of fraud, the party must have his day in court. He must have notice—time to procure his witnesses, and be heard at your bar in defence of his rights. It is a familiar principle to every lawyer, that an *ex parte* judgment, without notice, actual or constructive, is void, although the court, with notice, would have had jurisdiction over the subject matter, it is a universal principle, founded in natural justice from which an *ex parte* judgment of this Convention obligating a private right can obtain no exemption.

How is it proposed to conduct this proceeding? Fraud is charged in debate with the wildest declamation without the shadow of notice—without a tittle of proof—without so much as taking evidence before a committee, it is proposed to annul the solemn contracts and grants of the government! I say nothing at present of the monstrous injustice of so vile an act of repudiation—I deny the power of this Convention to perpetrate the deeds—I controvert the power of this government acting through a Convention on a charge of fraud, to resume its own grant by an *ex parte* proceeding which denies a hearing to the grantee.

The position, that these colonial contracts are unconstitutional, is liable to the same objection. It is a judicial question, and must be judicially examined, after notice and a hearing allowed to the grantees.—But the position is clearly unfounded. It goes upon the ground that inasmuch as there was a general lien upon the public lands for the payment of the soldiers and the other public creditors, the grants to the contractors were unconstitutional. It is not pretended that there was any specific lien on the particular territory covered by these grants. The report of the General Land Office shows, that after discharging all military claims there will be left 180 millions of acres of public domain, which will be more than sufficient to discharge a public debt, which no one estimates at more than ten millions. These contracts are grants of all the territory within certain specific and descriptive boundaries to be reserved for settlement by the grantees of a certain number of families in a particular way, and within a certain time, to which families the contractors are to give not more than 640 nor less than 160 acres of land, with a further provision, that to the government is reserved every alternate section, with a right to the grantee, in some of the contracts, to

purchase the alternate section, by paying 12 dollars in cash and 640 dollars in the liabilities of the Republic. It will be admitted that the contractors have paid a sufficient consideration to support the contracts.— And in contemplation of law, at least, the advantages arising from the settlement of one half of the land, with an industrious population, will augment in an equal degree the balance of the other half which is reserved to the government. It will also be presumed that the \$652 for each alternate section, which the contractor pays, would be a fair compensation for the whole if no settlement had been made. In point of fact, also, it is questionable whether the government could have sold the land for as much in its own liabilities as the contractors have stipulated to pay. My own opinion is, that these contracts have increased the ability of the government to discharge its debts; and that more will be realized from the alternate sections of a populated country than could have been obtained from the whole of a district which would have remained for many years a mere hunting ground for the Indians. But whether the policy and the contracts were wise or unwise in a financial point of view, cannot effect their validity in any legal bearing of the question, as it is not doubted that the Legislature had the right to sell the public domain, and that these grants were made under its authority expressly delegated for that purpose. Admitting, however, for the sake of argument, that the law and grants are clearly unconstitutional, still I maintain that the question cannot be examined in this form, but is open to judicial inquiry only.

It is urged by the member from Fayette, Judge Baylor, that since these contracts were entered into, annexation has taken place, and the policy of the country is changed, and that we have a right to annul these contracts and take the land for 'public use.'

It is an elementary principle of international law, that a revolution or change of government does not affect any pre-existing private rights. This principle has been repeatedly affirmed by the Supreme Court of the United States in passing upon French, Spanish and British grants. [Vattel, B. 3, C. 13, sec. 200; 7 Peters, 51]

The change of policy can give no additional power to the new government over prior contracts and grants. The new government in this respect occupies precisely the condition of the old without acquiring any more jurisdiction.

The right to take private property for public use, or the right of eminent domain, is a different principle, and stands on other grounds. The principle itself is one of limited character, confined to the right to take in war the property of individuals necessary for the public use, and in other cases, not extended beyond the right of way and its incidents, and the right to take and destroy property in cities for the public safety. It must be clear a case of public use and not a measure merely

to swell the public treasury or to consult some fancied public policy, like the measure proposed. And Chancellor Kent states the uniform modern doctrine to be; that when private property is taken for public use; a compensation must *first* be given or provided, or the act of appropriation is void. The section under consideration provides no compensation, but only the desperate remedy of suit against the State for indemnity, "without any means of payment in case of a recovery.

The same jurist says, that "it undoubtedly must rest, (a general rule,) in the wisdom of the Legislature to determine when public uses require the assumption of private property; but if they should take it for a purpose not of a public nature, as if the Legislature should take the property of A. and give it to B; or if they should vacate a grant of property, or of a franchise, under the pretext of some public use or service, such cases would be gross abuses of their discretion, and fraudulent attacks on private right, and the law would be clearly unconstitutional and void."—2d vol. Kent's Com., 340.

Who does not see that this is an attempt to vacate a grant of property under the fraudulent pretext of public use? It is a bare-faced attack on private right, without a pretext of public use, which always proceeds on a supposed public necessity. There is no necessity for taking this land for the public use, for the State has without it 180 millions of acres of vacant public domain. It has no use for it, even as a territory, to populate. On the principle of taking property for public use, it would be much easier to justify a seizure of all the money and personal property of its citizens. For such an act, it might plead some necessity in the wants of the public treasury; but for an appropriation of these wild lands, of which she already has more than enough, no justification can be shown. It would be an undisguised and unjustifiable act of public aggression. Let us see the practical operation of this principle as sought to be applied by the learned gentleman. There is no provision in the Constitution of the United States, which forbids Congress to pass a law impairing the obligation of contracts.

Suppose, then, some anxious aspirant for the Presidency, surveying the vast valley of the Mississippi, studded with cities and towns, and teeming with opulence, should say to the balance of the Union, "we sold this country for a mere trifle; since then the Indian has been expelled, the forest subdued and the face of the land crowned with the riches of civilized life. It is obvious *the public policy* has changed—We want this country re-transferred to the public domain to raise means to pay the public debt and carry on splendid national works. There is no difficulty in the way, for ~~it has~~ *it has* been discovered by a learned Judge in Texas that we have a right to annul our former sales and take the country for "public use!" And if the principle insisted on be correct, the government might sell the same territory, and then resume the grant as often as the speculation should be found profitable. ●

The Convention is urged to prompt action on this matter by many of the gentlemen who have addressed you, sir, for the reason that when we shall have been admitted into the Union it will not be in our power to take such action in consequence of the prohibition of the Federal Constitution. Sir, I maintain that we are now restrained by that great instrument from the adoption of the measure proposed. The Constitution of the United States forbids any *State's* passing a law which impairs the obligation of a contract. Texas is not at this moment an independent State. - We have accepted the resolutions of annexation passed by the Congress of the United States. We have already parted with a portion of our sovereignty. We cannot make a separate treaty with Mexico, nor enter into alliances or separate treaties of commerce with foreign powers. The resolution declares "that Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be created into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union." The consent of the existing government has already been given, the resolutions have been accepted by this Convention, and that acceptance signified to the cabinet at Washington, and the troops of the Federal Government, have taken possession of the country. We are created into a *State* with a compact for final admission into the Union as soon as our Constitution shall be presented, and be presented with a republican form of government. We come, therefore, within the language of the prohibition of the Federal Constitution, which declares that "no State" shall pass any law impairing the obligation of a contract. We are under the flag and the protection of the Federal Government.

Whatever may be thought of this view of the subject, I cannot be mistaken in the position that no clause in a State Constitution can be valid, which violates the Constitution of the United States. Such a provision could have no higher sanction than an unconstitutional act of a State Legislature. It will not be contended that it is in the power of Congress to make valid a State law which violates the Federal compact. Neither is it in the power of a State, by revolutionizing, throwing off the ordinary forms of legislation, and acting through a convention, to pass a law impairing the obligation of a contract. The resolution of the Convention would still be a law, and the law of a *State*. It is not in the power of a State to evade the prohibition by a change of forms or names. The Constitution of a State is a material part of the law which admits it into the Union. It must be obvious, therefore, that a section in it, contrary to a provision of the Federal Constitution, as well as the act of Congress ratifying it, would be unconstitutional and

void, as much so as an act of the Legislature passed a century after its admission. They both stand on the same footing as *laws* of a State. For it has often been decided that each section in an act of the Legislature which presents a distinct and independent proposition is a law, and that one section may be valid and another void, and in relation to a constitution the rule is the same.

This section of the General Provisions of the Constitution would be the law of a State, and if valid of the highest import, because embraced within the organic law itself. Does it impair the obligation of a contract? In the cases of *Fletcher and Peck*, *Terret and Taylor*, and in the case of the *Dartmouth College*, it was decided that a grant of land by a legislative enactment, or by virtue of a law, by the legislature, was a contract, and protected by the constitution, whether the grant was executory or executed. That it amounted to a contract on the part of the State, that it would not resume the grant the State laws intended to have that effect were pronounced null and void. The further ground was taken, that the party granting could not annul its own grant for fraud or illegality, but that it could only be done by judicial enquiry. The 22d section of the General Provisions is a profound law, which proposed to annul and resume grants heretofore made in pursuance of an act of the Congress. It would therefore, be a law impairing the obligation of a contract, enacted by the party making the grant, and in every view of the case, would be a nullity.

We are asking too much of the Congress of the United States when we require them to ratify a State Constitution which contains provisions violating the Constitution of the Union. We are asking them to ratify what, by their oaths, they are bound to reject. By such a course we are jeopardizing our admission with the Union and the whole measure of annexation. Are gentlemen willing to take this responsibility for the sake of adopting a resolution which would be void, if inserted in the constitution? When the whole effect of it could only be to delay the ratification of the constitution, and might result in its final rejection, and the loss of this great measure?

The effect of the measure proposed upon the contractors would be precisely contrary to that which is desired by its advocates. So far from operating to annul the grants, and deprive the contractors of their premium lands, it would discharge them from the conditions and all obligations to complete the settlement. It was decided by the Supreme Court of the United States, in the case of *Arredondo*, upon well settled principles, that, when the government, by its own acts, rendered it impossible for the grantees to comply, he took the land absolutely, and freed from his part of the contract. There is no doubt that the adoption of the 22d section would have the effect to release the contractors from the introduction of the settlers, and at the

same time enable them to demand not only their premium lands, but all the advantage they might have derived from their contracts with the settlers in being authorized to stipulate for giving less than a section to a family. In other words, they would receive all they could possibly have received from a full compliance. It is not the part of wisdom for the State to place these contractors in such a position, that we cannot take advantage of any failure on their part to comply with the grants. If they are fastened upon the country, it is manifestly for the interest of the State that the population should be introduced, and the line of our frontier extended.

Much declamation has been introduced into this subject which does not belong to it, and is entirely foreign from the question in debate. We are constantly reminded of the poor soldier who by these contracts has been deprived of this territory upon which to locate his lands. Sir, there is still a boundless territory open to his claims. But the poor soldier has in reality little interest in this question. Unfortunately, he parted with his claim for the small pittance which his present necessities demanded, and this land scrip is now in the hands of a few speculators who wish to destroy these grants that they may seize upon and appropriate the country which the capital and population introduced by these contractors has rendered valuable. It is not the soldier, but the speculator, who is clamorous for the destruction of these grants. For my own part, I had rather see the country populated with small proprietors, actual cultivators of the soil, than to see it monopolized by a few large landholders who will retard its settlement and growth. The country appropriated by these grants is remote from market, and far better adapted to small grain and grazing than the growth of the heavy staples. It is a country which offers many more inducements to the farmer than the planter. In the hands of an industrious population from the western and northern States, it will become prosperous and opulent. It is true that a large portion of the emigration to this region is European; but the honest and laborious German has always been found a valuable citizen in every part of the Union. His industry, his love of social order and his attachment to our institutions are proverbial. He will force back the savage and carry civilization into the useless and unproductive wilderness. Let us then maintain the interests and honor of the State by upholding right, and rejecting a measure, which if adopted, would cover us with indelible disgrace. I do not object to any judicial enquiry into the validity of these contracts, but I protest against this arbitrary edict of confiscation, alike tyrannical and impotent.

On motion of Mr. Van Zandt,

The Convention adjourned until half-past 8 o'clock, to-morrow morning.