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Tuesday morning, Aug. 19th, 1845.

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

Messrs Anderson and Mayfield filed the following protest, which was ordered to be spread upon the journals:

To the Hon President of the Convention :

The undersigned, as a delegate from the county of Gonzales, availing himself of an essential privilege, asks leave, most respectfully, to spread upon the journal of the Convention, his protest against the adoption of the first section of the legislative report, together with the reasons which influence him in so doing.

I conceive that by the adoption of the section referred to, many of the rights of individuals who are now residing in this country in good faith, with strong attachments to free institutions, are denied the most important privilege of aiding in the promotion of those who are to represent and determine upon the great interests of the community. It is true, the section referred to, extends the privilege of franchise to all those who may have strictly complied with all the requirements of the naturalization laws of the Republic of Texas, up to the adoption of this Constitution; but the true condition of the country, as well as the peculiar situation of individuals, justifies the assertion, that there will be many who will be wholly excluded from the right of franchise, by a strict adherence to the principles contained in the 2d section; (and that a strict construction will be required, there will be but little doubt,) although they have largely contributed to the support of the government; and have not only acquiesced in the change of our political institutions which is going on, but have cheerfully given their support toward the completion of the great measure for which we are assembled.

It would be unnecessary for me, at this time, to submit individual instances of that class of individuals who have become the actual cultivators of the soil of Texas—who have either deemed it unnecessary to take the oaths of allegiance, or who, ignorant of their duties and rights, have heretofore neglected it, and will continue in their present state up to the time of the adoption of this Constitution, and who, consequently, will be disfranchised by the adoption of the section referred to; which restrictions, as imposed by the section, operate, as I consider, with but little benefit to the country, and to the great injury of private rights.

Another and an imposing reason urges itself upon the consideration of the section so adopted,—which, it seems, if strictly observed, would force conclusions against the propriety and policy of the section.

It is conceded by all who are acquainted with the reserved rights of States, and those which are ceded, that every State in the Union has the

inherent right—the undenied power—to pass such laws, or to incorporate into its Constitution such provisions as shall constitute a voter, or qualified elector, without regard to the naturalization laws of the United States. Then, if this be the fact, I consider that portion of the section which uses the term “citizen of the United States” wholly unnecessary, and utterly impolitic, because it is anti-democratic, and adverse to the advancement of free institutions, and the spirit of the times.

Under the section referred to, all those who are not citizens of the United States, and emigrate to Texas after the change of government, will be unable to exercise the inestimable right of freemen—the right of voting—until they shall have become citizens of the United States, which requires a period of five years, together with other indispensable duties. So long as Texas remained an independent government, a provision of this kind would be very valuable. But even under the Constitution of the Republic of Texas, when we had not that solid protection which the United States exerts over all its parts, and which will be successfully extended to us, against all internal and foreign invasion upon established rights, we have experienced no evil; but, on the contrary, a hardy and industrious population, from the liberality of our institutions, have been invited to participate in all the benefits resulting from free government, to the development of our riches, and to the finding out new objects upon whom to bestow the rights, the comforts and the great blessings of free principles. If ever the reason did exist for a period of probation so long as five years, that reason has now ceased; and the reason ceasing, the effect ought to be felt no longer.

I think the fears of those who consider European population as dangerous to our institutions, are utterly unfounded: no other than the spirit which stimulated our forefathers, stimulated them: if there be any other, it is that of interest; and it is certainly the interest of every individual, to enter readily, or essentially, into the very spirit of the institutions which are to govern him.

The result of the policy of the section, is to close the doors which have heretofore been open to emigration; and if it should not have that effect, it will deny the essential right of being represented upon important interests—when, at the same time, they must contribute to the support of the existing government. A shorter period of time than the one proposed, would have produced all the benefits contemplated by the section, and would have extended to individuals rights which were just and compatible with free and liberal principles.

Then, upon the ground—first, that it affects the present inhabitants of the country, who are actual cultivators of the soil; 2d, those who are here at this time, and have not, nor will not, be competent voters; and lastly, its exactions upon all who may seek Texas as their final resting place from tyranny, persecution and distress, are sufficient reasons to

influence me in the course pursued; and, in due deference to the opinion of the Convention, he subscribes himself,

JNO. D. ANDERSON.

I concur in the objections above urged, to the section alluded to, for the reasons assigned; and further, because it leaves the rights of a large number of actual inhabitants, and cultivators of the soil, to hold and inherit land, subject to doubt and the interpretation of principles of international law; and I do, therefore, accordingly, respectfully protest against its adoption.

J. S. MAYFIELD,
Of Fayette.

Mr. Darnell, chairman of the select committee to whom was referred the 18th section of the General Provisions of the Constitution, together with the report of the majority and minority of the Judiciary committee, on the same section, made the following report:

Committee Room, Aug, 18, 1845.

To the Hon. THOS. J. RUSK,

President of the Convention:

The select committee to whom was referred the 18th section of the article on the General Provisions of the Constitution, together with the substitute for the same reported by the majority and minority of the committee on the Judiciary, have had the same under consideration, and have instructed me to report and recommend to the Convention, for adoption, the following substitute for the section.

N. H. DARNELL,
Chairman.

SUBSTITUTE.

"All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property; and laws shall be passed, more clearly defining the rights of the wife, in relation as well to her separate property, as that held in common with her husband."

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

Mr. Ochiltree, chairman, &c., made the following report:

Committee Room, Aug. 19, 1845.

To the Honorable THOS. J. RUSK,
President of the Convention:

The committee of Revision, &c., have had the Bill of Rights, the Judiciary and the Executive Articles of the Constitution under consideration, and have directed me to submit the accompanying report.

The committee would, with much respect, state that they have ventured to go somewhat further than the strict letter of their authority would warrant, in recommending to the adoption of the Convention, an entire separate article, providing for the proper distribution of the powers of the government—which article, they would suggest, should follow the Bill of Rights, to be succeeded by the Legislative, the Judicial, the Executive, and the article containing the General Provisions, in the order here stated.

Your committee would beg leave to call the particular attention of the Convention to the concluding provision of the 9th section of the Bill of Rights; and would suggest to the Convention, the propriety of striking out that part of the section which occurs after the words, "*habeas corpus*," and which makes the writ returnable to the county where the offence is committed. Your committee are well satisfied that if this portion of the section is retained, it will operate frequently to the very great injury of the party charged with crime, or to the interest of the judicial district in which the crime shall have been committed.

All of which is respectfully submitted.

W. B. OCHILTREE,

Chairman.

Mr. Bache offered the following resolution, which was laid on the table one day, for consideration.

Resolved, That it shall be the duty of the Governor to nominate, and with the advice and consent of two thirds of the Senate, at the first session of the Legislature to appoint a board consisting of three commissioners, whose duty it shall be to ascertain, classify and liquidate the public debt, according to the principles of equity—under such regulations as the Legislature may prescribe.

On motion of Mr. Cazneau, the report of the revising committee was taken up, and the grammatical corrections of said committee, to the articles on the Bill of Rights, the Judiciary and the Legislative Departments, were adopted.

The following amendment, proposed by the same committee, to the 9th section of the Bill of Rights, viz: to strike out "returnable where the offence is committed" was taken up, and after some debate, Mr. Young moved the previous question.

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

The question being the adoption of the amendment proposed by the revising committee, the ayes and noes being called thereon, stood as follows:

Ayes—Messrs. President, Armstrong of J., Brown, Caldwell, Darnell, Evans, Everts, Forbes, Hemphill, Henderson, Howard, Irion, Lewis, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Navarro, Power, Rains, Runnels, Scott, Tarrant, Ochiltree and White—26.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Bache, Brashear, Cazneau, Clark, Cunningham, Cuney, Davis, Gage, Hicks, Hogg, Horton, Holland, Hunter, Jewett, Jones, Latimer of L., Latimer of R. R. Love, Lumpkin, Miller, Smyth, Standefer, Van Zandt, Wright and Young—30.

So two thirds not voting for the amendment, it was lost.

Mr. Mayfield gave notice that at the proper time, he would move a reconsideration of the votes engrossing and adopting the 9th section of the Bill of Rights.

The following additional section to the Bill of Rights, reported by the committee of revision, was then adopted:

"Art. 2d. The powers of the Government of the State of Texas shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another. and those which are judicial, to another: and no person, or collection of persons, being of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

Mr. Cazneau moved to lay the Bill of Rights on the table.

Lost.

Mr. Rusk moved to amend the Bill of Rights, 5th section, by inserting after "*ex post facto* law," the words "retroactive law;" which was adopted by a vote of two-thirds.

The Bill of Rights was then read a third time, and passed.

The article on the Executive Department was read a third time.

Mr. Rusk offered the following as an additional section, to come in as the 19th section:

"The Governor, by and with the advice and consent of two-thirds of the Senate, shall appoint a convenient number of notaries public, not exceeding six for each county, who, in addition to such duties as prescribed by law, shall discharge such other duties as the legislature shall from time to time prescribe."

Which was adopted by a vote of two-thirds.

The Executive article was then passed.

The article in relation to the Judicial Department, was read a third time.

Mr. Scott moved to strike out the 18th section of the Judiciary Department.

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

Ayes—Messrs. Bagby, Brown, Cunningham, Hemphill, Jones, Lipscomb, Scott and Smyth—8.

Noes—Messrs. President, Anderson, Armstrong of J, Armstrong of R, Baylor, Bache Brashear, Cazneau, Clark, Cuney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Hunter, Irion, Jewett, Latimer of R. R., Lewis, Love, Lusk, Lumpkin, Mayfield, McGowan, McNeil, Navarro, Power, Rains, Runnels, Standefer, Ochiltree, Van Zandt, White, Wright and Young—40.

So the motion was lost.

The article on the Judicial Department was then passed.

Mr. Davis asked leave of absence for the remainder of the session, after to day, which was granted.

The committee on the State of the Nation made the following report:

To the Hon. THOS. J. RUSK,

President of the Convention:

The committee on the State of the Nation, to whom was referred the difficult and complicated task of providing for the abolition of the present Government, and to adopt and establish in lieu thereof, a government for the State of Texas, as a separate and independent State of the American confederacy, deem it necessary until this change, and until consummated by being accepted, as a State, in the American Union, that a Government suitable to our condition, acknowledged and approved by this Convention, and by the people, should continue and be preserved, to exercise full and ample powers—to do all and everything which is now done, under the Constitution and laws of the Republic of Texas; and also, everything which is contemplated to be done and performed by the Governor and Legislature, under the powers granted therein, by the Constitution now formed, and submitted for adoption by the people. For that purpose, your committee submit the following resolutions for your consideration.

Respectfully, yours, &c.,

JOHN CALDWELL, Chairman.

AN ORDINANCE

To provide for referring directly to the people of Texas, the proposition for the annexation of Texas to the United States of America, as contained in a joint resolution passed by the Congress of the said United States of America, and approved by the President thereof, on the _____ day of _____ 1845; and for submitting to the said people of Texas, for their approval or rejection, the Constitution made and adopted by their delegates in Convention assembled, in view of said annexation; and also to provide for the abolition of the present form of Government of the Republic of Texas, and to adopt and establish in lieu thereof, a Government for the State of Texas, as a separate and independent State of the American confederacy.

1st Be it ordained by the people of Texas, and it is hereby ordained by their delegates in Convention assembled, That polls shall be opened at the several election precincts, as now established in the Republic of Texas, on the _____ day of _____ next; at which polls all the qualified voters of said Republic shall have the right to assemble, and vote directly upon the proposition of annexation, as offered in the joint resolution passed by the Congress of the United States of America, and approved by the President thereof, on the _____ day of _____ 1845; and also upon the adoption or rejection of the Constitution made and prepared by their delegates in Convention assembled, for the formation of a state government, in accordance with said proposition.

Sec 2 Be it further ordained by the authority aforesaid, That, at the election to be held at each of said polls, the managers of the same shall cause to be prepared three tabular lists, each of which shall contain five columns; the first to be headed—"Names of Voters;" the second—"For Annexation;" the third—"Against Annexation;" the fourth—"Adoption of the Constitution;" and the fifth—"Rejection of the Constitution;" and as each person presents himself to vote, his name shall be written in the first column, on each of said lists; and he shall there pronounce *viva voce*, his vote upon the question presented— if in favor of annexation, by saying "Annexation;" if opposed to it, "No Annexation;" and if in favor of the adoption of the Constitution, by saying "Adopt;" and if opposed, "Reject;"—each of which said votes shall be marked on a line with the name of the voter, in its appropriate column; and the said election shall be conducted, in all other respects, in conformity with the law of the Republic now in force, regulating elections.

3d. Be it further ordained by the authority aforesaid, That at the same time and places above specified for holding said elections, polls shall also be opened under the superintendence of the same managers, judges and other officers, for the election of Governor and Lieut. Gov-

error for the State of Texas, and for Senators and Representatives to the Legislature of said State, in accordance with the apportionment of representation as established by said Constitution; but the votes for said Governor and Lieut Governor, Senators and Representatives to the Legislature shall be by ballot.

4th. Be it further ordained by the authority aforesaid, That it shall be the duty of the managers of said elections to forward within two days after the same shall have been closed, the said lists to the Chief Justice of the county in which the same were held, whose duty it shall be to deposit one of said lists in the clerk's office of the county court of said county, to forward another one of said lists to the Secretary of State of the Republic, and the remaining one of said lists to the Speaker of the House of Representatives of the Legislature of said State of Texas, the said lists so forwarded to be properly enveloped and marked on the outside "Election Returns of _____ county"

5th. Be it further ordained by the authority aforesaid, That the President of the Republic be and he is hereby, requested to issue his proclamation ordering the said elections, and the chief justices of the several counties in this Republic, or their associates, are hereby required to cause said elections to be holden in their respective counties at the time and manner provided for by this ordinance; and should any chief justice or his associates fail to cause said elections to be holden at the time and places herein provided, the people of the precinct where such failure exists are hereby authorized to choose managers, judges and other officers to conduct said elections.

6th. Be it further ordained by the authority aforesaid, That if the people of Texas elect to accept the aforesaid proposition of annexation, and approve and adopt the Constitution for the State of Texas submitted to them by their said delegates in Convention, which shall be ascertained from the returns made to the Secretary of State, whose duty it shall be to publish the result of said polls, then the first Legislature of said State shall convene at the seat of government established under this Constitution, on the _____ day of _____ next, and proceed immediately to organize under said Constitution; and that after they shall have organized, the Speaker of the House of Representatives shall, in the presence of both branches thereof, open the returns of said election, count and compare the votes, and declare the names of the persons who shall have been chosen as Governor and Lieut Governor, which said persons shall forthwith take the oaths of office prescribed by the Constitution, and enter upon the discharge of their respective duties.

7th. Be it further ordained by the authority aforesaid, That it shall be the duty of the President of Texas, immediately after the inauguration of the Governor, and his entrance upon his duties, to deliver to him

the possession of all records, public documents, archives and public property or money of every description whatsoever, under the control of the Executive branch of the Government of the Republic of Texas, who shall dispose of the same in such manner as the Legislature may direct.

8th. Be it further ordained by the authority aforesaid, That the Legislature shall proceed forthwith, after its organization, to pass all such laws and resolutions as may be necessary to the complete and perfect organization of the government of the state, and as may not have been provided in the Constitution and this ordinance. The said Legislature shall, as soon as it may be proper, proceed to elect senators and provide for the election of representatives to represent the State in the Congress of the United States; it shall also adopt such measures as may be required to cede to the United States, at the proper time, all public edifices, fortifications, barracks, posts, harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means as pertains to the public defence, now belonging to the Republic of Texas; and to make the necessary preparations for transferring to the said United States all custom houses and other places for the collection of impost duties and other foreign revenues.

9th. Be it further ordained by the authority aforesaid, That from and after the organization of the government of the State of Texas, as provided for and contemplated by the Constitution of the State of Texas, and this ordinance, all revenues arising either from the tonnage of vessels or upon the importation of goods, wares and merchandize from foreign ports or places, which up to that period were collected by the government of the Republic of Texas, shall be collected by and for said state of Texas, and for the exclusive benefit of the government and people thereof, and shall be returned to and disbursed by the Treasurer of said State of Texas, until the measure of annexation shall have been finally consummated and completed by the acceptance of the Constitution of said State by the Congress of the United States, and the admission of said State of Texas into the Union as a separate and independent state of the confederacy, and until the custom houses are taken possession of by the officers appointed to collect the revenue according to the laws of the United States; and all laws now of force in the Republic of Texas, providing for the collection of imposts and tonnage duties shall remain in force and be observed in said state, for the time aforesaid, except such laws as impose duties upon goods, wares and merchandize imported from ports or places within the said United States of America, and such as impose tonnage duties upon the ships and vessels of the said United States. And it is hereby declared that from and after the organization of the state government of Texas, and until the said state shall be fully admitted into the Union as one of the states of the American confederacy, there shall be no duties collected at the custom

houses of said State upon the tonnage of the ships and vessels of the United States, or upon goods, wares and merchandize imported and brought into said State of Texas from any port or place within the said United States or the territories thereof.

10th. Be it further ordained by the authority aforesaid, That to prevent inconvenience or embarrassment from resulting to the people of Texas from the change of the government which is about to be effected, by the abolition of the present existing government of the Republic of Texas, and the establishment of a state government preparatory to the incorporation of said State of Texas into the American Union, as one of the states of the confederacy, it is hereby declared,—1st. That all officers, civil and military, who shall be holding and exercising offices within the said Republic of Texas, at the time of the change and organization of the state government, except the officers of President, Vice President, President's Cabinet and Foreign Ministers, Chargés and Foreign Agents, (all of which are hereby declared to be abolished from that time,) shall remain in office, and continue to discharge and perform the duties of their respective offices, provided the same be not abolished by, or repugnant to, the Constitution of the State, until they shall be superseded by the Legislature of the State or the Governor thereof, or until said offices be abolished by law.

11th. Be it further ordained by the authority aforesaid, That the Governor and Legislature of the State shall as soon as practicable, after the change of the government, proceed to organize the judicial system of the State in accordance with the provisions of the Constitution, by appointment of judges of the supreme court, the establishment of judicial districts and the appointment of the judges thereof, and such other officers as are provided for by this Constitution.

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

On motion the Convention adjourned until 3 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Ochiltree, the preamble of the Constitution was taken up, and, on motion of Mr. Hemphill, it was referred to the revising committee.

On motion of Mr. Darnell, the report of the select committee on the rights of married women, was taken up.

The substitute reported by the select committee for the 18th section, being before the Convention, Mr. Horton moved to amend the substitute by inserting "laws shall be passed providing for the registration of the wife's property."

Which was adopted.

The ayes and noes being called on the adoption of the substitute as amended, stood thus:

Ayes—Messrs. President, Anderson, Bache, Bagby, Brown, Caldwell, Clark, Cuney, Davis, Darnell, Evans, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hunter, Jewett, Latimer of L, Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Smyth, Tarrant, Standefer, Ochiltree, Van Zandt and Young—37.

Noes—Messrs. Armstrong of J, Armstrong of R, Baylor, Cunningham, Everts, Hicks, Irion, Latimer of R. R., M'Gowan, McNeill, Scout and Wright—13.

So the substitute of the committee was adopted.

Mr. M'Neill offered the following as an amendment to the substitute just adopted:

Provided that the property in possession of either husband or wife, or an agent of either, shall be subject to the debts contracted on the faith of said property.

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

Mr. Brown offered the following as a substitute for the substitute of the committee:

All lands and slaves owned by the wife before coverture, and all subsequently acquired by gift, devise, or descent, together with the increase and profits of the same, shall be the separate property of the wife.

Which was rejected.

Mr. Armstrong of J, moved to insert in substitute of committee, after "separate" the words "and the community."

Which was lost.

The question was then on the adoption of the substitute as a section.

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

Ayes—Messrs. President, Anderson, Bache, Bagby, Brown, Clark, Cuney, Darnell, Davis, Evans, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hunter, Holland, Jewett, Jones, Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—35.

Noes—Messrs. Armstrong of J., Armstrong of R., Caldwell, Cunningham, Everts, Forbes, Hicks, Latimer of L, Latimer of R. R., Lumpkin, McGowan, McNeil, Scott and Wright—16.

So the substitute was adopted as a section.

Mr. Latimer of R. R., moved to take up the 21st section of General Provisions of the Constitution.

Carried.

Mr. Mayfield's amendment being before the Convention,

On motion of Mr. Van Zandt, a call of the Convention was ordered.

On motion of Mr. Young, the call was suspended.

On motion, Messrs. Van Zandt, Forbes and Davis were appointed to wait upon such members as were sick, and receive their votes on the amendment to the 21st section.

On motion of Mr. Anderson, a call of the Convention was ordered.

Mr. Lusk moved a suspension of the rule.

Lost.

Mr. Young moved to suspend the call, and called for the ayes and noes upon it, which resulted as follows:

Ayes—Messrs. Anderson, Brashear, Bagby, Brown, Cuney, Hunter, Latimer of R. R., Latimer of L, Love, Miller, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and Young—17.

Noes—Messrs. President, Armstrong of R., Baylor, Bache, Caldwell, Cazneau, Clark, Cunningham, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Hunter, Holland, Iron, Jewett, Jones, Lewis, Lumpkin, Lusk, McGowan, McNeil, Navarro, Power, Rains, White and Wright—31.

So the Convention refused to suspend the call.

Mr. Everts moved to suspend the call.

Which was lost, ten members voting against it.

The committee which was appointed to wait upon the absent members having returned.

On motion of Mr. Horton, the call was suspended.

The question now rested on Mr. Mayfield's amendment to the 21st section of the General Provisions.

Mr. Mayfield said: Before the vote is taken, Mr. President, if I have the leave of the Convention, I desire to submit a few remarks in addition.

to those I have made upon this subject, elicited by the course the debate has taken. And, first, I will state that I shall be gratified if gentlemen will join me in another measure which I will offer to the consideration of the Convention, by which we can reclaim to the country from forty-two to fifty-five millions of acres of land, which are at present held up and at the disposition of the fraudulent land operators of this country. We can do this without doing injustice to any, without violating any correct principle, without infringing in the least degree the constitutional rights of every man, or acting in opposition at all to the Constitution of the United States, or that of Texas. And at the same time I think we shall be keeping ourselves within the line of our duty, and not in the least degree jeopardizing the adoption of our Constitution by the government and people of the United States: and that by doing this, we shall relieve the people of Texas, who are bound down by a heavy debt, which they are under the most serious obligations to discharge, and extend justice to those who are truly meritorious.

I have occupied, Mr. President, the time of the Convention on two occasions upon the present question; and I return my most hearty and cordial thanks for the attention with which I have been favored. It is one of vital importance; one upon which many entertain serious and perhaps conscientious doubts with regard to the mode of proceeding which should be adopted, to guard and protect the safety and interest of the State on the one side, and at the same time to do justice to individual rights. Now, sir, for my own part I do not seek, and I am satisfied that no gentleman who joins with me in the opinions I entertain upon this subject, desires to violate or infringe in the least degree, any settled principle of international law or regulation of civilized society. And, sir, I flatter myself that there are many upon this floor who do not feel that when they entertain and express these opinions, they are, in that degree becoming as uncivilized as the common savage, or the Comanche, who roams over your prairies, or may disturb the quiet or repose of your frontier settlements. I flatter myself that those entertaining the opinions I do, and who will express them by the vote they give here upon this occasion, do not conceive that they are classing themselves with a band of robbers. Why, sir, are honorable gentlemen entitled to indulge in denouncing all who differ from them upon this subject? Is it because they have expelled the savage from these halls? Is it because that class whom they seek to protect have expelled the savage from the line of the settlements? Is it because these free communities, so much eulogized by one of the honorable gentlemen, have given peace and protection to your frontiers? No, sir; what have done it; the strong arm of the freeman of your country has done it; it has been the work of those who seek to maintain the institutions of the land as they exist; those men, sir, who seek not only to give Texas a name, but who sometimes give her a character whose approach, I trust, will give us the privilege of deliberating here and discussing these

questions, where in former days the rude savage had his resting place. And are those who entertain the opinions I do, and propose to reclaim this ground from the gripe of the greedy speculator, to be thus stigmatized as worse and more brutal robbers than the wild Comanche? Sir, what are the results to be attained by pursuing a different course? We are told by an honorable gentleman that the establishment of vast free labor communities on our western borders will be the consequence of carrying out these contracts. He did not say it, perhaps, but that is the inference from his language. He told us however, that he would rather see one man of such a class occupying the soil than perhaps fifty or a hundred greedy land speculators. Sir, by the operation of this system what do these gentlemen build up? Do they build up an untrammelled class of free and independent population? No, sir. They create little principalities or dukedoms under the control of princes, who, like one already among us, wear sprigs of liveoak or cock feathers in their hats, as an indication of their superiority. This population has no intercourse with the great mass of the people. Whom does this system benefit? Does it inure to the maintenance of the institutions of the land or to the general benefit of the country? No, sir. When these emigrants are settled, the petty duke or prince is their master. What further result does it lead to, sir? I am as little of an alarmist as other men; but let me ask you what will be the practical result of this system? In time Texas is to be divided into States with equal and independent powers; and the consequences will be that the establishment of free States where slave labor is not to be employed, will be demanded at your hands. Now I will boldly avow upon this floor, not as the representative of the county of Fayette alone, but of the people at large, that I am willing to make a declaration upon this occasion, that no State shall be established, unless it carries with it the institution of slavery, and in doing so I believe we shall express the sentiment of every man, woman and child within the just limits of Texas. Will you then, by a secret and underhanded policy, establish these little petty dukedoms and principalities, which, in after time, may become free States upon your borders, and within the latitude and limits of a country exclusively appropriated as well by policy as by nature and character of the soil and productions to the employment of slave labor? Again, I ask, to whom do the benefits of this system inure? Not, Mr President, to the representative of the poor soldier who died at the Alamo, or fell upon the plains of Goliad, or was made a sacrifice with Fannin; for none of these rank or class themselves with the speculators of your land. They are only asking that poor bounty for the services of the soldier and the patriot which the universal sentiment of mankind has awarded them. These claims are yet, in many instances, in the hands of the poor representatives of such people; and they but ask of their country an equal share in the distribution of these lands which their kindred fought for. But the true speculator is he who will come with this great body

and mass of free laborers, who, instead of making them freemen when he presents them upon your soil, will in the first instance exact a contract from them before they leave the shores of Europe, and upon their arrival in this country, will rob them of the portion to which they are justly entitled. If this population is to be introduced into our country, sir, I want them to come as freemen, and not as the serfs of any petty prince, or duke, or company. I want them to come as freemen, willing to identify themselves with the institutions of the land, to come of their own free will and accord, with a proper understanding of our institutions before they leave their homes.

I say therefore, Mr President, inasmuch as the whole question has been thus presented, that upon this occasion we cannot do better than boldly to assume the responsibility imposed upon us, and devote ourselves to the consideration of the subject in such a manner that we shall do injustice to none, but at the same time be just to ourselves and establish a principle which will clearly and indubitably maintain the character and interest of our country, its honesty and prosperity, and manifest to the world a disposition to economize our means for the payment of the public debt, and the support and maintenance of the government.

I am sorry to be constrained to allude so often to the remarks of the honorable gentleman from Bexar; but, sir, we have been so often lectured by him with regard to the performance of our duties, and his strictures have been so severe and caustic in their character, and apparently in some degree aimed at myself, that I cannot refrain from noticing them upon this occasion. His philosophy, sir, it seems to me, is wholly inapplicable to the case; and in truth, so far as his argument of yesterday is concerned, he reminds me of the Scotchman who was called upon to define metaphysics, and said, "if you see one man talking to another, and the man talked to does not understand what the other is talking about, and he that is talking dinna ken what he is talking about himself, that is metaphysics." Now the gentleman's philosophical and metaphysical conclusions seemed in some degree of that character yesterday; for he entered into abstractions, which, I flatter myself, so far as this question is concerned, no man in this Convention understands as applicable. His genius and imagination, however, may have induced him to believe them applicable to the case under consideration.

I hold that this question is one exclusively of policy; or rather that policy independent of other considerations, does direct that we should act upon this question without fear. When we come to look at the true facts of the case, we find that some twenty-four millions of the public domain of Texas are occupied by the location and survey of certificates pronounced fraudulent by the tribunals of the country established by law. And when we come to estimate the area of the land to be squandered away among these various contracts, we find that it amounts to about as much more. Now, sir, the question presents itself to the consideration of the people of Texas, whether upon this occasion we should not adopt

some act whereby these lands might be reclaimed to the country to support her credit and maintain her institutions; whether the people of Texas by their Delegates in Convention assembled, will wrest them from the greedy hands of these speculators, and appropriate means thus afforded to the honest payment of the national debt, contributing something to the support of common schools and the purposes of education in the land. The true issue is not one between Sam Houston and any body else; it is one of justice and right between the country and a set of harpies who have preyed upon it from the time of the organization of our government down to the present period.

The ayes and noes were called upon the amendment, and stood as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bagby, Brown, Burroughs, Caldwell, Clark, Davis, Evans, Gage, Holland, Horton, Hunter, Jewett, Jones, Latimer of L., Latimer of R. R., Love, Lumpkin, Mayfield, McNeil, Moore, Ochiltree, Parker, Runnels, Standefer, Tarrant, Van Zandt, White, Wood, Wright and Young—32.

Noes—Messrs. President, Anderson, Bache, Brashear, Cazneau, Cuney, Darnell, Everts, Hemphill, Hicks, Hogg, Howart, Irion, Lewis, Lusk, Lipscomb, Miller, McGowan, Navarro, Power, Rains, Scott and Smyth—23.

So the amendment was adopted.

Mr. Young moved the adoption of the section.

Mr. Rusk said: I look upon this, sir, as a most important question. To my mind, though I may be mistaken, it presents the direct issue of the success of the cause of annexation before the Congress of the United States, or its failure. It is, sir, an important matter, when we take into consideration the gigantic and stupendous speculations embraced by these contracts. That they are unconstitutional, I firmly believe. That they were obtained by fraud, or are fraudulent in their nature, I firmly believe. But the Convention in this article treats them as contracts, and if they are recognized as contracts, to set them aside would be to violate, to my mind, a plain and palpable provision of the Constitution of the U. States. I will not detain the Convention by going into an argument upon the constitutionality or fraudulentness of these contracts. I must, however, be permitted to say, that gentlemen who have argued the question of fraud have not argued it according to the principles of law. It is not necessary for the President to be corrupt to perpetrate a fraud; it is not necessary for the Legislature to be bribed. The law lays it down in plain language that two individuals may make a fair and honest contract, which is still a fraud. I make no charge against any officer of the government. There is one thing, however, that I will

say: the history of these transactions shows that over thirty millions of acres of the public lands are chained up by these very contracts from the location of the early settlers of the country, of the soldier who served us in the darkest hour of peril, and of the heirs of those who have fallen bawling for our rights. Yes, sir, and they contemplate that these very contractors may thereby amass in their own hands upwards of seven millions of acres of the public domain. But this is a digression. I believe when we get these contracts before the judicial tribunals, they will declare them unconstitutional, that they will declare them a fraud upon those persons having the highest right to locate the public domain.— But while I believe them fraudulent and unconstitutional, I am called upon here to perform a solemn act; I am called upon here to discharge a duty, in the performance of which I owe it to myself and my country to act with caution; to the cause of republican governments to act with caution; to my posterity to act with caution, and to let no immediate circumstances influence me to come to conclusions and pursue a course which in my opinion may and will end in the defeat of annexation. An argument has been used which I regretted to hear, because, men when they are anxious to do a particular thing are easily persuaded; when they see such stupendous frauds as these, in their anxiety to defeat them, they will act upon principles which would not otherwise guide them.— It has been argued, unfortunately as I think, that the Congress of the U. States has no right to inquire into the acts of this Convention in the fundamental law of this land, that we are not in the U States, and this is an act preparatory to our going in. But, sir, there is a fallacy in this argument. Is this act made with reference to Texas acting as a separate and independent government? No, sir; but with reference to Texas considered as a State in the union. It is as much an act of the state if our Constitution is afterwards accepted, as any act passed by the Legislature ten years hence. I regret extremely that I cannot, upon this subject, go with gentlemen with whom I have often stood shoulder to shoulder. If I could do so without a violation of the Constitution of the United States, and without endangering the question of annexation, no man would go farther. The Constitution, sir, which we shall here form will be a State law, not the fundamental law of a separate government, but the fundamental law of a State of the U States and subject to the Constitution of the United States—and that constitution declares emphatically that no State shall pass any law impairing the obligation of a contract. Then, sir, if we adopt the 21st section, I shall feel from the moment it is adopted, that the fate of our Constitution in the U States is sealed. And I am not alone in my views of the subject. A gentleman, learned in the law, a gentleman of age and experience, who sits near me, one who is not as easily moved by passion and feeling as I might be, after having reflected well upon the subject, entertains the opinion that if this clause is adopted, our Constitution will be inevitably rejected. Let us pause, then, sir, and reflect. What will be the conse-

quences? The people of this country are already highly excited upon the question of annexation—the hope of this event animates the bosoms of them all, from the Sabine to the Rio Grande. Every thing is sought for with avidity which has the most remote bearing upon the subject. I, sir, in common with the people, believe that our hopes of futurity depend upon the consummation of this measure. Whether they do or not, the people believe it. The affairs of the country would be thrown into confusion, and turmoil and anarchy would follow the rejection of our Constitution by the U States. But, sir, if we are true to ourselves, we need entertain no fears.

I have indulged further in my remarks than I intended when I rose; having risen for the purpose of moving that the section, together with the amendments proposed, be referred to a special committee.

Mr Love offered the following as a substitute for the section as amended:

The Legislature shall not have power to extend the time, alter, change or modify the conditions in favor of any contractor who may have heretofore made any contract for the introduction of colonists into Texas, under any law now or heretofore in force.

And in order to test the constitutionality, legality or validity of any such contract, the Attorney General, as soon as practicable after the organization of the state government, shall institute legal proceedings against the several contractors to annul and set aside the aforesaid contracts, as well on account of their unconstitutionality, illegality and for failure to comply with the terms and conditions of the same.

And after judicial investigation, should it appear that any or all of said contracts are unconstitutional, illegal or that the terms shall not have been complied with by the contractors, the court is directed to declare said contracts void and of no effect.

It is, however, declared that all colonists introduced before the adoption of this constitution by the people, shall be, and hereby guaranteed the right and possession of any lands they may have acquired as a colonist under any agreement or contract made with a contractor. And it is declared that until the investigation can be had, as authorized by this constitution, the right of any contractor to introduce any colonist under any contract shall be, and the same is hereby suspended.

Mr. Brown moved a call of the Convention.

Mr. Van Zandt moved to adjourn until 5 o'clock to-morrow morning.

A call of the Convention was ordered.

Mr. Tarrant moved to adjourn until half past 8 o'clock to-morrow.

Mr. Mayfield moved to adjourn until 9 o'clock to-morrow.

Lost.

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

Wednesday Morning, Aug. 20, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Ochiltree, chairman of the revising committee, made the following report:

Committee Room, August 20, 1845.

To the Hon. T. J. Rusk,

President of the Convention:

The committee of supervision have had the preamble and the Legislative article of the Constitution under consideration and have directed me to report the following substitute for the preamble and amendments to the legislative article.

Very respectfully,

Your obedient servant,

W. B. OCHILTREE, Chairman.

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

Mr. Lewis moved to take up the report of the revising committee.—
Carried.

The preamble offered by the committee as a substitute for the preamble heretofore proposed, was first in order, and is as follows:

PREAMBLE.

"We, the people of the Republic of Texas, acknowledging with gratitude the grace and beneficence of GOD, in permitting us to make a choice of our form of government, do in accordance with the provisions of the joint resolution for the annexation of Texas to the United States, approved March 1st, 1845, ordain and establish this Constitution."

Which was adopted as a substitute for the original.

Mr. Lusk moved to strike out "Republic." Lost, and the substitute as a preamble, was then adopted.