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.

On motion of Mr. Ochiltree, the rule was suspended, and the preamble read a third time and passed.

The correction of all the grammatical errors in the Legislative Department, proposed by the committee of revision, were adopted.

Mr. Van Zandt moved to strike out the word "for" at the end of the 23d section. Carried.

On motion of Mr. Anderson, the article on the Legislative Department was taken up, to be read section by section.

Mr. Howard offered the following as an addition to the first section:

"Nothing in this section shall be so construed as to disfranchise any person, entitled to vote by the existing laws at the time of the adoption of this Constitution."

Which was rejected—two-thirds being required to vote for its adoption.

Mr Darnell moved to amend the 12th section, by inserting after the word "Speaker," the words "of their own body," and to insert after "President pro tem." the words "of their own body." Lost.

Mr. Hemphill moved to amend the 14th section, by adding to it "except in such cases as may require secresy."

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

Ayes—Messrs. Brown, Caldwell, Cazneau, Cunningham, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Howard, Lumpkin, Lipscomb, Miller, Navarro, Parker, Power, Scott, Tarrant and Wright—22.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Burroughs, Clark, Cuney, Evans, Horton, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, Mayfield, McGowan, McNeil, Rains, Smyth, Ochiltree, Van Zandt, White and Young—31.

So the amendment was rejected.

Mr. Henderson offered the following as an additional section, to come in after the 21st section:

"After a bill or resolution has been rejected by either branch of the Legislature, no bill or resolution containing the same substance, shall be passed into a law during the same session."

Mr. Forbes moved to amend by inserting the words "or like" after the word "same," so as to read "the same or like substance."

Which was rejected, and the additional section adopted by a vote of two-thirds.

Mr. Jones moved to strike out the last clause of the 23d section "nor shall the members be capable, &c. Lost.

Mr. Armstrong of J., offered the following as an addition to the 23d section:

"The President, for the time being, of the Senate, and Speaker of the House of Representatives, shall be elected from their respective bodies."

Which was adopted by a vote of two thirds.

Mr Forbes moved to amend, by striking out in the 29th section, the word "four" where it occurs, and insert "three;" strike out "three" where it occurs and insert "two;" and strike out the word "two" where it occurs, and insert "one."

Mr. Bagby moved to amend the amendment, by striking out the word "one",—which, after some discussion, was withdrawn.

The question on Mr. Forbes' amendment was taken and lost.

Mr. Van Zandt moved to amend the 34th section, by striking out after the words "seat of government," the words "until the year;" also, to strike out "unless" and insert "until;" and, also, strike out the word "sooner," so as to read "then the same shall be the permanent seat of government until the State shall be divided."

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

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Beche, Brown, Clark, Cazneau, Cunningham, Evans, Everts, Gage, Hemphill, Hicks, Horton, Howard, Irion, Jewett, Jones, Latimer of R. R., Mayfield, McGowan, M'Neill, Miller, Navarro, Runnels, Smyth, Tarlant, Van Zandt, White and Wright—31.

Noes—Messrs. Bagby, Brashear, Burroughs, Caldwell, Caney, Darnell, Forbes, Henderson, Hogg, Holland, Hunter, Latimer of L., Lewis, Love, Lumpkin, Lusk, Lipscomb, Parker, Rains, Scott, Standefer and Young—24.

Two thirds not having voted for the amendment, it was lost.

Mr. Cazneau moved to fill the blank in the 34th section, with 1869.

Mr. Young moved to fill the blank with 1870.

Mr. Hemphill moved to fill the blank with 1900. Lost.

Mr. Brown moved to fill the blank with 1876. Lost.

Mr. Ochiltree moved to fill the blank with the words "till altered by a Convention of the people."

The question was taken on Mr. Young's motion to fill the blank with 1870, and carried.

Mr. Forbes moved to strike out the words "unless sooner divided," in 34th section.

Mr. Bagby moved the previous question.

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

The main question being the passage of the article on the Legislative Department, was taken and carried.

On motion, the orders of the day were taken up.

Mr. Love's substitute for Mr Rusk's substitute, for the 21st section of the General Provisions, before the Convention—

Mr. Maxfield gave notice in writing, that he would move a re consideration of the vote adopting the 34th section of the article on the Legislative Department, with a view of offering an amendment thereto.

Mr. *Evans* said: I meant yesterday, Mr. President, to have addressed the House, but was too unwell to do so—indeed, I am rather too unwell now, to speak as I could wish. There are a great many topics coming up in connexion with the subject which ought to be noticed. This question has a very important bearing upon the interest of Texas. I had trusted the Convention would give to it that mature consideration and full discussion its magnitude seemed to demand.

The people have called us to the performance of great and responsible duties. They have clothed us with their full authority—all the political power which the Republic of Texas possessed conferred upon this Convention—the people reserving to themselves the right only of passing upon our acts. This Convention has all the power over the political rights of the people. Whatever we do, if assented to by them, no power on earth can object to.

We claim as yet to be an independent sovereignty, and that this Convention represents that sovereignty. One of the most distinguishing attributes of independence is full and perfect jurisdiction over each member in the community, and over every item of property constituting the property.

My friend from Bexar, [Mr. Howard] I had thought, established this doctrine in his argument on the contested election from Nacogdoches. He then enforced, in a strain of pure and lofty eloquence, the rights of freemen to pull down and build up governments at pleasure—that we, as Deputies in Convention, were legislating in the very highest capacity of legislators—framing an organic law to last unrepealed for years; a basis on which all our rights may safely repose for ages.

He now, with other learned gentlemen, contends that the people in Conventions assembled, are limited in their powers. Neither he nor they have adduced any authorities for these doctrines. I know Kent's

Commentaries have been read; an opinion of the Supreme Court of the United States has been referred to; neither of which bear them out.

I cannot urge against gentlemen, that they have introduced no authorities. We are here on the extreme frontier, far removed from libraries. Oh, 'tis to be regretted that we have no books to aid us in our deliberations. Called suddenly together, with no previous preparation, laboring to despatch the work before us in the shortest time allotted for the consummation of annexation, 'tis imposible to investigate thoroughly questions so much dependent upon the authority of history, of law and the principles of government.

I have just laid my hand upon Vattel's Law of Nations, and selected a few sections to read. Not having had time to arrange them, I must pray the attention of Deputies to catch points as I read. Permit me first to state, that, in my opinion, no respectable political writer or jurist ever advanced the doctrine, that a people when in Convention were under any law, other than the great law of nature and of nations.

On page 51.—Nations being free and independent of each other in the same manner as men are naturally free and independent, the second general law of their society is, that each nation ought to be left in the principal enjoyment of that liberty it has derived from nature: from this liberty and independence, it follows that every nation is to judge of what its conscience demands, of what it can or cannot do, of what is proper or improper to be done. In all cases, then, when a nation has the liberty of judging what its duty requires, another cannot oblige it to act in such a manner.

Again, on page 175—Every thing in political society ought to tend to the good of the country; and if ever the citizens' persons are subject to this rule, their fortunes cannot be exempt. The State cannot subsist, or administer public affairs in the most advantageous manner, if it has not the power of disposing on all occasions of all kinds of goods subject to its authority, it has the right of disposing for public policy of the eminent domain.

And, on page 64.—We may conclude from what has been said that if there arise any dispute in a state, on the fundamental laws, the public administration, or the prerogatives of the different powers of which it is composed, it is the business of the nation alone to judge and determine then in conformity to its political constitution: in short, all these affairs being solely a nation's concern, no foreign power has the right to interfere in them, nor ought to do so otherwise than by its good offices.

From these principles it follows that we can do anything which our conscience and our duty demands, without consulting the wishes of any government or people. We can resume all grants, dissolve all contracts, and no nation can rightfully complain. In short, we can do as we may please—destroy all rights.

If we violate the law of nations, by trampling down the rights of citi-

zens of other governments, what is the remedy? Those governments may make it a cause of war; and war is the only remedy.

If we violate the law of nature, by destroying the rights of our own citizens, or foreigners standing as these contractors do, in the attitude of citizens, I affirm that there is no remedy, not even by war.

There is but one tribunal to which a people is held accountable, for violating any of the principles of natural justice: that of Him, by whom all the actions of men are weighed.

Texas herself is the sole sovereign judge of what her duty or her conscience requires, and no power but the power of the most high can call in question her judgment.

Again, on page 50—The universal society of the human race, being under an institution of nature, that is the necessary consequence of the nature of man, all men in whatever station they are placed, are obliged to cultivate its dictates. They cannot dispense with them by any convention or private association. Where they unite in civil society, in order to form a separate state or nation, they may justly enter into any particular engagements with those with whom they associate themselves, but they are still under the obligation of performing their duty to the rest of the human species.

Yes; we are under obligations to perform all our duties to foreigners—to other nations—to the rest of the human species: but with regard to ourselves, we are under obligations to our own citizens to perform all our duties—to cultivate the dictates of nature—but responsible to no human tribunal if we do not.

The United States cannot complain of our action upon this subject; because the very thing we propose to do; she actually did, or caused Spain to do, in the treaty for the cession of Florida.

During the pending of that negociation, Spain made large grants of land to certain individuals: in the treaty drawn up by Mr. John Quincy Adams, and Louis D'Onis, it was stipulated that Spain should annul these grants.

I will read a part of the 8th section of the treaty as found in the land laws of the United States, in special reply to my distinguished friend from Nacogdoches, [Gen. Rusk]:

All grants made since 24th January, 1818, when the first proposal on the part of her Catholic Majesty for the cession of Florida was made, are hereby declared and agreed to be null and void.

The United States, by solemn treaty, demanded of Spain to annul certain grants. Now, I ask, was this in violation of the law of nature, and of nations? Was it in violation of the Constitution of the United States? When Florida became a part of the United States, the citizens residing upon her soil became *ipso facto* citizens of the United States. The treaty expressly annuls a large class of grants, depriving many citizens, holding under them, of all claims to their lands. The

grantees, for ought I know, may have looked to Spain for compensation, but then the grants were gone and gone forever.

I believe we could not do the United States a more acceptable service, than to abrogate the contracts under discussion, and reclaim this immense domain, and hold it unimpaired as the fund, out of which to liquidate our national debt.

I venture the opinion, though with great hesitation, that these grants were void from the beginning. That they are repugnant to the principles of our free institutions, and in violation of the Constitution of the Republic of Texas.

I will again read from Vattel, page 176 —"The prince or superior of society, being naturally no more than the administrator and not the proprietor of the State, his authority as sovereign or head of the nation, does not of itself give him the right to alienate or dispose of the public property. The general rule then is, that the superior cannot dispose of the public property as to its substance. If the superior makes use of this property, the alienation will be invalid, and may at any time be revoked by his successor, or by the nation. This is the law commonly received in France, and it was upon this principle that the duke of Sully advised Henry IV. to resume the possession of "all the domain of the crown alienated by his predecessor." Now, there is no principle in our social compact; no power in our Constitution which authorizes either the Congress or the President of the Republic to dispose of such extensive districts of the public domain.

Without pretending to be prepared to pursue this branch of my argument, I will state that our Constitution has its theory, made with reference to a certain idea, to which these contracts stand in obvious contradiction. In no country where the principles of absolute political quality are held true principles which our Constitution is held to conform to, can any department of the government, without an express warrant, invest any one citizen with millions of acres of her public domain and to the exclusion too of the rights of her citizen soldier, and humble but honest pioneer, who had a previous substantive interest in this domain."

Again Vattel says, on page 231: —But if a private person arrogates to himself an exclusive right to a country in order to be a monarch, people will laugh at his vain pretensions; a false and ridiculous possession can produce no real right.

I know these authorities are not directly in point. I read them, believing they bear very closely upon the subject.

If the vain pretensions of individuals to large districts of country with the view of building up a monarchy, be regarded as ridiculous in countries not politically free, how ridiculous should such pretensions be regarded in our own country?

I do not know what his visions of future aggrandizement are, if such grants is made to a German prince. What his visions of future aggrandizement are, I know not. Surely it would not be very consistent with our free institutions, to permit him or General Mercer, or

the other contractors, to fill their immense estates with obedient vassals.

To place these contracts in the most favorable light, they must be considered not as private or ordinary grants, but of grants of public policy, made for political ends; and, consequently, repealable at pleasure by the law making power of Texas. The land specified in these contracts, is not vested in the contractors, only so much as they may be entitled to as premiums for the actual introduction of emigrants, of which we propose not to divest them. The purpose for which the contracts were made, was to ensure a rapid and dense settlement of our frontier districts of country. Had this policy been founded in wisdom, 'tis now no longer needed; it is superceded by the change, now taking place in our relations with the United States.

But I assert, that the object for which they were granted has been totally defeated, by the manner in which the contractors have been carrying them out. Instead of sectionizing the country, building cabins and bringing families and settling them on the alternate sections, they have held back, importuning Congress for extension of time, waiting for the country to fill up with emigrants, with the fraudulent intention of deriving princely fortunes from their contracts, without fulfilling any of the obligations on their part.

In the mean time, as emigration flowed into the country, from the pitiful quantity of land offered by the contractors, and seeing the country unprepared for their reception, the emigrant would leave the colony and go where he could settle himself free from any restraints, and procure as much land as he wanted.

The right to appropriate land, as special or private property, was a question long mooted among philosophers of other days. The great Locke laid it down that we could rightfully appropriate so much, and only so much as we might need for the plough, or to graze our flock, only so much as we can mix our labor with.

No human power can sever from the great common of nature, and confer upon man any more land than he can advantageously use for the benefit of his race.

These grants, then, are alike repugnant to the lessons of philosophy, the principles of our free institutions, and the policy of our country; and to abrogate them, we have produced authority from the law of nations, and a precedent from the United States. May we not appeal to the candid and enlightened everywhere, for the morality of our acts in annulling them?

With regard to the amendment proposed by my friend from Galveston, [Col. Love,] I feared it did not meet the mischief, and was constrained, though reluctant to oppose it. I understand it to be a rule of law, thus in a grant with a condition subsequent, if the condition be void by the grantor, or becomes impossible through the act of the government, the estate cannot be divested. I know not what construction courts may put upon these contracts; and think it not safe to dispense with any of

the conditions. I fear in stopping the introduction of emigrants, we will be playing into the hands of the contractors, and enable them to reap princely fortunes, without expending a single dime, excepting fees to the lawyers for quieting their titles in the courts.

Gentlemen assure us that the contractors have forfeited their contracts by a non-compliance with their conditions, and assure us that the courts will set them aside.

I have no great confidence in the integrity of human tribunals. When —where has ever a large grant to land been set aside in the courts of the United States?

The Supreme Court of the United States has repeatedly affirmed grants upon principles of law which violate the plainest dictates of natural justice, as understood and felt by all men of sound moral constitutions. who are not trained to the profession of the law, or hardened by the commerce of the world.

In Arkansas, some years since, the most flagrant frauds ever conceived of were sustained by the courts, in what was then known as the Lovely claim.

The United States took from Arkansas, while yet a territory, a portion of her settled country, and gave it to the Cherokee Indians. To remunerate her citizens for the loss of their improvements, Congress granted to each cultivator of the soil of the years of majority, a half section of 320 acres of land.

Officers of government opened offices to hear proof and grant claims to those entitled to them. When these claims became valuable in market, a few speculators, in combination with some two or three or more of these same government officers, conceived the idea of supplying the demand, being very respectable, and scrupling to commit the crime of perjury, they resorted to various devices, to still the expostulating voice of conscience.

Mudmen were actually made, named, and received claims in due form. Little boys, with slips of paper on which were written the words "twenty-one years of age" in their shoes, were caused to swear that they were over twenty one years of age.

These frauds were notorious. But the chief men of the country, the politicians, the lawyers and the judges became the innocent purchasers, and they were all established—upon some principle or other of law—perhaps thus fraud is never to be presumed—or perhaps thus no one can be heard against the official acts of government agents.

I cannot go with my friends in denouncing the Mercer contract as peculiarly fraudulent. I have had the pleasure of personally knowing General Mercer, and believe him above the suspicion of fraud; but he is a speculator, and, unfortunately for the interest of humanity, gentlemen of his order and class think it all laudable and right to make all they can out of governments.

I think favorably of the contractors of Peters' colony. They have

done some little towards settling their colony; as far as they have gone, I would pay them their premium lands.

No doubt this contract, and the others also, were conceived by our government to be for the best interest of the country. But then the contractors all have failed, wholly failed to comply with either the letter or spirit of the contracts, and have forfeited all their rights under them. The interest of the country demands that we should abrogate them. We propose to secure the contractors in their premium lands, and the colonist in his home.

I hope the House will pardon me for the very inartificial manner of my address, as I have no time to arrange my thoughts.

In conclusion, I will notice what seems to be the main argument of the gentleman from Nacogdoches, [Gen. Rusk] and pressed with more or less confidence by every other hon. deputy who has spoken in the opposition: that is, that Texas is already partially in the Union, and consequently, under the Constitution of the United States: or that she will be, before we could give this fiat any force. From this they argue that we can pass no law impairing the obligation of contracts.

Texas, up to this very day, is an independent sovereignty in full possession of all her powers. She can break off at pleasure her negociations for annexation, can emit bills of credit, can make treaties which will be of binding force until the final act of the Congress of the United States shall merge her sovereignty in that of the United States.

I might grant to gentlemen, that Texas is now in the Union: that she can exercise no more power than can any one of the States; and that these contracts are of the description which fall within the meaning of the Constitution. Still Texas has the power to abrogate them. The people in Convention assembled might do so, were Texas fully incorporated in the Union.

The language of the Federal Constitution is, no State shall pass any law impairing the obligation of contracts.

The term *law* means a legislative enactment, and not a Constitution, order or decree of the people legislating in their sovereign capacity.

The framers of this instrument have their minds directed certainly to the law making power, and not to the judicial or sovereign power.

The argument and the authority produced to support it prove too much: prove that we are violating the Constitution in almost everything we do. We violated it to day in extending the term of probation for a seat in the Legislature from six months to two and three years.

I will read from 1 Kent, 417.—"All incorporeal hereditaments, as immunities, dignities, offices and franchises, are rights deemed valuable in law, and when they are the subject of a contract or grant, they are just as much within the meaning of the Constitution as any other grant."

President Jones and all the officers of the Republic, have by contract a right each to his salary and the perquisites of their several offices. Their offices, every one of them, are just as much within the meaning

of the Constitution, as are these colony contracts. All should alike fall before the sovereign authority of the people; all should be dissolved for the public good; should be made to yield to the public will solemnly and conscientiously expressed in the organic law of Texas.

Mr. Cazneau moved to adjourn until 4 o'clock. Lost.

On motion of Mr. Forbes, the Convention adjourned until 3 o'clock.

3 o'clock, P. M.

Convention met—the President being sick, Mr. Lewis took the chair, and called the Convention to order. Roll called; quorum present.

The 21st section of the General Provisions being first in order,

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

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

Mr. Armstrong of R, moved to appoint a committee to wait on Messrs Rusk, Moore, Parker and Wood, who were sick, and receive their votes on Mr. Love's substitute for the 21st section of the General Provisions.

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

Ayes—Messrs. Armstrongof R., Baylor, Brashear, Caldwell, Clark, Cunningham, Evans, Forbes. Gage, Hogg, Horton, Howard, Hunter, Jewett, Love, Lumpkin, Lusk, McGowan, McNeil, Scott, Smyth, Standefer, Tarrant, Van Zandt and Wright—25.

Noes—Messrs. Anderson, Bagby, Brown, Burroughs, Cuney, Darnell, Everts, Hemphill, Henderson, Hicks, Holland, Irion, Latimer of L., Latimer of R.R., Lewis, Lipscomb, Miller, Navarro, Power, Rains, White and Wright—22.

So the motion prevailed.

Messrs. Armstrong of R., Smyth and Young, were appointed to wait on the above named members and receive their votes.

On motion of Mr. Anderson, the 21st section of the General Provisions was laid on the table, and the report of the committee on Education was taken up; and the first section adopted.

In second section, Mr. Gage moved to strike out the word "shall" in the first line, and insert the word "may."

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

Ayes—Messrs. Brown, Bagby, Gage, Hemphill, Hicks, Hogg, Lumpkin, McNeil, Rains, Runnels and Young—11.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brashear, Burroughs, Caldwell, Clark, Cazneau, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Henderson, Holland, Irion, Latimer of L., Latimer of R. R., Lewis, Lusk, Lipscomb, Mayfield, McGowan, Miller, Moore, Navarro, Power, Parker, Runnels, Standefer, Tarrant, Ochiltree, Van Zandt, White and Wright—41.

So the amendment was rejected.

On motion of Mr. Cazneau, the report of the committee on Education was laid on the table, and the 21st section of the General Provisions, with the substitutes, were again taken up.

The ayes and noes being called on the adoption of Mr. Love's substitute, stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Darnell, Forbes, Hemphill, Henderson, Hicks, Hogg, Howard, Holland, Irion, Lewis, Love, Lipscomb, McGowan, Miller, Moore, Navarro, Rains, Runnels, Smyth and Ochiltree—30.

Noes—Messrs. Armstrong of R., Baylor, Brown, Cunningham, Cuney, Evans, Everts, Gage, Horton, Hunter, Jewett, Jones, Latimer of L., Latimerof R. R., Lumpkin, Lusk, Mayfield, McNeill, Parker, Power, Scott, Standefer, Tarrant, Van Zandt, White, Wright, Wood and Young—28

So the substitute was adopted.

Mr. Brown moved to strike out the last clause of the substitute in relation to the suspending of the contracts.

Mr. *Moore* said: Although still feeble from the effects of my late illness, I feel called upon to make a few remarks upon this question. If we rescind these contracts, what will be the result? Suits will be instituted against Texas in the courts of the United States, the decisions may be adverse, and a heavy amount of damages be awarded against her. But if we let them alone they are harmless. The contractors cannot fulfil the conditions of their contracts. The terms are so rigid that very few colonists can be induced to comply with them to the very letter, and unless the Legislature is authorized to modify them, they will all fall by the act of the contractors themselves, and the lands will revert to the government and be a source of revenue. But perhaps it may be asserted that to suspend these contracts does not violate a contract. Mr. President, let me appeal to your own sense of honesty and honor; and I know that I appeal where these attributes are possessed, to pursue this course in a transaction with another as a private individual, would bring the blush of shame upon your cheek: and will you consent to do that in a collective capacity which you would not do as an

individual? Texas has been slandered; she has to exist but a little while as a nation, and while she does so exist, let her escutcheon be unsullied. If these were the last words I should utter, I would cry out to my countrymen to regard her honor as sacred to the last. It has been won with toil, suffering and blood, and I trust it will be preserved: I feel confident that there is honor and honesty enough yet among us to maintain it. But if this section prevail, I must consider that honor as tarnished. I believe that these contractors in Europe, many of them men of wealth, influence and intelligence, and also in the United States, will raise against us a cry of disapprobation: they will point to this measure as a stain upon our character, and charge us with dishonesty. While I use these terms, let me not be considered as casting one single reflection upon the honorable members about me. I have seen the honesty and integrity which they have displayed here: but I know that the best of men, sometimes from prejudice, and sometimes from wrong information, are liable to act wrong. Whether a popular clamor through the country has urged some to sustain this measure, I know not. I am aware that there have been some cries of disapprobation recently heard along the frontier; but these opinions do not extend widely through the country. In my own section there have been but few complaints upon this subject, but few in the middle, few in the eastern sections. The people believe that these contracts were made under the authority of a law passed by the Legislature. they know they have been ratified by two of their Presidents; and they know that repeated attempts have been made to violate these contracts, and that the bills have been vetoed: and they have submitted, and sustained the measure. I know of but few people in the country who are willing that a contract should ever be violated. They say the policy may have been bad in the beginning, but we must submit to the evil. They consider, and I believe correctly, that it would be dishonest, unjust, and injurious to our national reputation to abrogate or even to suspend these contracts. But I believe it is the opinion of most intelligent men in the country, that the conditions have not been complied with, and whenever they shall be investigated, I am satisfied that proof upon proof will be adduced to show that not one of the contracts can be sustained. Why then for fear of a remote evil should we do an immediate wrong? I am too feeble to proceed further. I still hope, sir, that this question may be acted upon with that deliberation and caution, and regard for the national honor which the subject demands.

The ayes and noes were called upon the motion to strike out, and stood as follows:

Ayes—Messrs. Baylor, Bache, Brown, Burroughs, Caznean, Cunningham, Cuney, Evans, Everts, Forbes, Guge, Hemphill, Henderson, Hogg, Horton, Howard, Holland, Hunter, Irion, Latimer of R. R.,

Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree and White—39

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Bagby, Caldwell, Clark, Darnell, Hicks, Jewett, Jones, Latimer of L., Love, Runnels, Van Zandt and Young—16.

So the clause was stricken out.

Mr Caldwell offered the following, to come in at the end of the substitute:

"Provided, the amount of land so allowed, does not exceed the quantity allowed to colonists by law."

Which was adopted.

Mr. Mayfield offered the following as a substitute for the substitute of Mr. Love as amended:

"The colonization contracts entered into heretofore with any contractors by the President of Texas, for the settlement and colonization of any of the unappropriated lands of the country, are declared null and void; but all persons who may have been introduced, or emigrated to the country under the provisions of any of said contracts, and who shall be residing within the limits of said colonies at the time of the adoption of this Constitution by the people of Texas, and engaged in agriculture or any of the mechanic arts, shall be guaranteed in the quantum of land to which they were entitled by reason of their emigration. Provided, always, that the Legislature shall have power to pass laws necessary to enable said contractors "who entered into contract with the President," to institute suits against the State for the recovery of any indemnity in lands to which they may be equitably entitled, and grant to them the premium lands to which they may be justly entitled."

Mr. *Jewett* said: I trust, Mr. President, that this House will see the propriety of adopting the substitute now proposed, and I cannot forbear expressing my hope that such will be the case. Every member who has spoken upon this subject has admitted the unconstitutionality and illegality of these contracts: and yet, sir, the phantom of *no annexation* seems to deter us all from adopting a remedy for this acknowledged evil:

"Now shrink the timid, and stand still the brave."

Sir, is the spirit of State Rights dead in Texas? The people expect us to pass some provisions securing to the soldier of the country those rights

which they won in the battle fields, and to the early settlers the redemption of the pledges made them. I know I cannot boast the age and legal experience of the gentleman from Washington. But I will not be deterred from the performance of duty, by the apprehension of the rejection of our Constitution by the U S Congress. He has favored us with his scriptural reminiscences, and intimated that in relation to the abrogation of old grants to lands, made by our former Constitution, the language of that Congress to us may be, "Go, brother, sin no more." I, too, have read the scriptures, and recollect another passage peculiarly applicable to this question. It is the parable of the barren fig tree. Our Savior, when he approached it and found that it bore no fruits, uttered his malediction against the barren trunk, and said, "Cut it down: why cumbereth it the ground." So, sir, would we say of these stupendous contracts, that have been barren of all good to the country. Cut them down—let them no longer cumber the ground.

The ayes and noes were then called upon Mr. Mayfield's substitute.

Mr. *Runnels* said: The section as adopted in my opinion does not embrace the desired object. I voted for the amendment proposed by the gentleman from Galveston, and regret very much that I did so, for I believe that had my vote been cast the other way, it would have produced a tie. I shall vote for the amendment offered by the gentleman from Fayette, because I believe it embraces the object designed to be reached by this Convention. I was disposed to compromise this question upon the amendment offered by the gentleman from Galveston: but inasmuch as the most important part of it, and the only one calculated to secure the country any protection at all against these enormous speculations has been stricken out, I shall vote for the substitute, or anything in any form or shape in which it may be presented, which will suspend these contracts upon principles of equity and justice. What are these contracts? They are of a political character. They were made with a view to the settlement of the country and the protection of the frontier. Time has passed: the condition of the country is different; and this policy has therefore ceased to exist. I am fully satisfied that it would be equitable for this Convention to suspend the operation of these contracts until they shall be fairly and equitably adjudicated upon. I do not go to the full extent of the amendment offered by the gentleman from Fayette. I believe that the contractors should be entitled to the benefit of all their operations, their labors and expenditures. But I believe that the important interests of the country require and demand of us to abolish these contracts and pay the individual contractors the damages they may sustain in consequence thereof. If we permit these contracts to go on, it is emphatically that the State of Texas will never be able to pay her national debt. Then are not the mem-

bers of this Convention satisfied that it would be equitable to suspend these contracts, political in their character, compensating at the same time the contractors?

Mr. *Henderson* said: I shall be called upon, Mr. President, to vote upon this question. I have listened with a good deal of interest to the arguments of gentlemen who have advocated the nullification of these contracts, and had hoped that, with all their ingenuity, they would have been able to present me some clause or section by which we could remedy the evil without endangering the annexation of Texas to the United States.

I have listened diligently to their arguments, and I must be permitted to say that I have not heard the first reason given calculated to convey to my mind the impression that the dangers pointed out by my friend from Washington can be avoided. I have come therefore, to the determination that, so far as my vote is concerned upon this occasion, nothing shall divert me from the course which I am persuaded that the people of Texas, if they were here, and thought they understood this question as I think I understand it, would take. I am satisfied that they would say, if by adopting the clause proposed, or the amendment thereto, they would endanger the measure of annexation—they would say with one unanimous voice that they would be opposed to such interference.

Then the question results in this; shall we risk the great measure which we are sent here to advance, by adopting the measure proposed, or shall we pass it by, and suffer the evil? Who can doubt the choice which should be made? Sir, if I were asked to say whether Texas should remain free and independent, or whether we should give up the last foot of our domain, I would say we should abandon that, and take annexation. Then I am opposed to the amendment, because I think it will infringe that part of the Constitution of the United States which declares that no state shall pass any law impairing the obligation of a contract. Is this a contract? Have we not in the very section under consideration styled and regarded it as such? If it is a contract, illegal or legal, and we adopt such a clause in our organic law, we are offering to the United States and asking them to accept or approve a Constitution embracing a clause which does contravene an express and plain provision of the Constitution under which we propose to come and live. Is not this the case? And I would ask gentlemen to show me the difference between the power of a State after it is in the Union to pass a law impairing the obligation of a contract made by that State with any citizen, and that to place a similar clause in a Constitution which is to be submitted to the United States government for its sanction. Where is the difference? It is here; that in the one case the Legislature may repeal such an act, while in the other it is an organic law; and the

objection, I take it, is more forcible to an act of this description than it would be to a legislative act. The United States has presented certain resolutions to us, which in substance say, you may be admitted into the Union by adopting a Constitution, with the consent of your people and government, which is to be republican in its form, and it will be ratified if not anti republican, or repugnant to the provisions of that of the United States. But we are told by gentlemen that we have illustrious instances and examples where other States have impaired the obligation of contracts, and subsequently have been admitted into the Federal Union of North America. I grant the truth of the statement, and I say that these are not parallel cases. And for this reason. In the cases referred to, the States that interfered with and impaired the obligation of contracts had done that act and consummated it before they asked admission into the Union. We on the contrary propose a Constitution to the United States containing the declaration of this effect to impair such an obligation, and ask their sanction to that. And what do we ask them to do by proposing this Constitution for their acceptance? We ask them to sanction this unconstitutional law. We have taken upon ourselves to say to the contractors, until you prove to us certain facts, you shall not be permitted further to enjoy the privileges which you claim under these contracts. I care not whether they were legal in their inception or not; I do not pretend to say whether they were fraudulent or not; for this has nothing to do with the question. Let me ask gentlemen what we should gain by passing this clause, even though the United States should adopt it as a part of our Constitution? Suppose this Constitution were presented, and that no exceptions were taken to that clause, though plainly and palpably violating the Constitution of the United States, and that it should be adopted, would that make it legal and obligatory? Can the bare act of a majority of the two branches of the Congress of the United States repeal the Constitution? If not, then, I would ask gentlemen who advocate this provision, what good would result from enacting it here? Can it nullify these contracts? If I am correct in the view I take of this matter, it will do no good. But let us look to the evil; what evil will it do? We are told by honorable gentlemen that it can result in no evil. But suppose that my position should be regarded as a correct one by the members of the Congress of the U. States, the consequence would be, to say the least, that this Constitution would be sent back to the people of Texas to have it reformed, and they would be required to expunge this unconstitutional provision. That is the least evil we could expect.

But, sir, when we look at the resolutions under which we are acting, we see that we are to be admitted under this as one of the conditions, that we present a Constitution which shall be republican in its form and in no degree contravening any provision of the Constitution of the United States, on or before the first day of January next. And we can

only hold that government bound to us by the pledge of the public faith, provided we fulfil this condition by the time specified: otherwise the U States will be absolved from all sort of obligation to receive us at any period. That is the position in which we must regard ourselves as standing.

But, sir, we are asked by an honorable gentleman on my left, to say what power can question our acts if we pass this clause. I, sir, feel my strength and dignity when I say here as a representative of the people of San Augustine, that in this Convention I am forming a Constitution in part for them. But when I look to another quarter, I feel that I am controlled by a power more omnipotent than that people. I say it not in depression of spirits, not as a humble man, but in all due respect to my own position and that of Texas, that we are controlled by the United States, We can derive no benefit from what we are doing here, unless what we do and say is sanctioned by that government. It is true that if we were acting as an independent State there would be no power which could control us; because foreign governments do not take it upon themselves to interfere with contracts between private individuals and any government. But is that the case here? Are we passing a law which alone requires the sanction of the people and government of Texas? Are we remodelling or reforming a Constitution which requires nothing but our own sanction here and the sanction of the people of Texas? If I understand the matter rightly, this Constitution requires not only the sanction of this Convention, and of the government and people of Texas, but the approbation of the Congress of the United States. That Constitution under which we propose to enter and live, declares that Congress may admit new States into that Union, and that their treaties and laws authorize them to supervise the Constitution or organic law of a State which proposes to come into the Union. They have then, superintendence and control over our acts so far as regards this organic law. Here we present them a Constitution which, upon its very face, contains an article contrary to the Constitution under which they are acting, and which they are sworn to support; and even if they should overlook this clause, and should adopt our Constitution with this in it, and it should turn out to be the case that it impairs in any degree the obligation of any contracts, I declare it as my solemn belief, that notwithstanding Congress shall have adopted the Constitution containing this clause, yet inasmuch as they have not the power to alter their own Constitution, it would be the duty and the sworn duty of the judges to declare it inoperative. The gentleman from Fannin referred to the treaty with Spain at the time of the acquisition of Florida, as an instance in which the United States had suffered this course. Sir, what were the facts presented in that case? These, sir: that the Spanish government had made certain large and extensive contracts with individuals, and it is perhaps known by that gentleman, if not known by every other who has investigated the case, that the government of Spain had reserv-

ed the eminent domain, that she had the power to rescind these contracts whenever she chose, the power to say "from and after this day these contracts shall cease and be suspended." I would ask now, where has Texas reserved a power of this kind? If she has reserved it, it might have been a parallel case. With these views I shall oppose the amendment. If it were in the power of this government to suspend the operation of these contracts without endangering the great interests of Texas, and I were called upon to do that, on the ground that they were in their inception founded in error or bad policy, I might be disposed to say, "take from these individuals the contracts you have made with them, because they are against public policy," and I might want no other reason. But this is not the great question here. And I feel bound to enter my solemn protest against the adoption of any such provision. I would not hazard the success of the great measure we are called here to aid in consummating for all the public domain. I shall vote against that amendment, or any of a similar character, and, in doing so, I feel that I can lay my hand upon my heart, and look in the face of God and say, "I have not sinned."

Mr. *Love* said: I did not wish to enter into a discussion of this kind. Although I did not myself question the power and right of this Convention, uncontrolled by the United States or any other power, to annul any contract, without the fear of any consequences, still I have been desirous to avoid it, more on account of the fears expressed by others, than on account of any entertained by myself. Having failed in the object aimed at in the amendment which I offered, I am now prepared to vote for the absolute nullification of these contracts, and I think I can show conclusively that, in doing so, we do not interfere with any clause whatever in the Constitution of the United States. In the first place, we have heard a great deal about that clause of that Constitution which says that no State shall pass any law impairing the obligation of a contract. Now sir, I deny the existence of a solitary dictum or decision among those of the Supreme Court, and I defy gentlemen to produce one, which applies that clause of the Constitution to the sovereign act of a State. Look at every decision upon the subject; and you will find that they apply exclusively to contracts between man and man in different states. And what was the object of the introduction of this clause? It was to prohibit a State from passing any law allowing its own citizens to repudiate a debt.

Yet we are told that it applies to the sovereign act of a State, and that it is contrary to this provision of the Constitution of the United States for a State to nullify a contract, or declare it to be null and void. What did the Supreme Court say in the great Yazoo case? Did it not expressly recognize the right of the State of Georgia to nullify the contract in consequence of fraud, not through the judicial tribunals, but as an act of the State? I hold with the gentleman from Fannin, though I

may be considered radical in my opinions, that there is no power but the power of God, which can restrict the acts of this Convention in its legislative capacity, provided we frame and submit to the United States a republican form of government. That government has no right to question the power of a State to regulate its own internal policy. It has made but a single requisition, which is nothing more nor less than this: that we should regulate that policy in a republican manner. The States are sovereign and independent within themselves; and so that they have a republican form of government, there is no power which can control them in the Constitution of the United States. By the Constitution of the United States, a citizen is absolutely precluded from bringing a suit against a sovereign state, Where then, sir, is the force of the gentleman's argument, when he tells you that if you annul these contracts by your act in this Convention you do no good, but only give a right to Charles Fenton Mercer and others to prosecute suits against you for a violation of their contracts, when if he had turned to the Constitution of the United States, he could have found that citizens are absolutely prohibited from bringing suits against a State? Let me draw the attention of the Convention to the state of things which will arise in the Congress of the United States, the thoughts of which make gentleso sorely afraid to vote for any thing to secure the rights of the people. How shall we stand there? We, by a solemn act of legislation, and in our Constitution first declared, that all the public domain should be subject to location under the claims of the men who participated in the revolution. Afterwards bonds and promissory notes were issued with the pledge that the public domain should be held sacred for the payment of the public debt. Subsequently the Legislature of the country, for a purpose supposed best at that time, made these stupendous contracts, said to embrace the enormous quantity of thirty millions of acres. I am not disposed to enter into the discussion of the question of fraudulency, for I wish to exclude every thing not necessary to the proper understanding of the case. We then present our Constitution to the Congress of the United States for acceptance. We have arrayed on one side the soldiers, the bond holders, &c., and on the other Charles Fenton Mercer and the Dutch prince with their enormous claims. Now would gentlemen have me believe, under these circumstances, that the Congress of the United States, in a great national question which has overleaped all law and every thing which has come in its way, would stop the prosecution of a great national measure, and appoint a committee to investigate the fact whether the people of Texas had the right to annul these contracts; that they would overlook the dangers connected with the subject of slavery upon our borders, and would say to C. F. Mercer, your claim is paramount to every other consideration, and we will reject this Constitution, because you made with Texas a contract which, if carried out, would give you upwards of three millions of acres of land? Is not this the strangest idea that ever entered the brain of a sensible man, that

they would reject our Constitution because, forsooth, we may possibly not have acted strictly within our constitutional limits? Now what is the fact? It is asserted that we have legislative and not judicial powers. It is granted that we have the power to create courts to investigate any question we please, and to nullify, or to declare them void if they choose. Now to make the principle good, you must maintain that the power creating is a less power than the power created. Sir, is it to be supposed that the Congress of the United States would enter into such an investigation? When Louisiana was annexed to the United States, it was thought to require an amendment to the Constitution. Now what did the great democratic party do, sir? Did they stop to cavil? Not at all sir. The federal party said it was unconstitutional, and that this measure would arrest or dissolve the government, but the great democratic party did not stop; they were satisfied it was necessary to the safety of the great American Union, and they carried it through.

The influence of C. F. Mercer has been alluded to. His contract, sir, was made under most suspicious circumstances. I will not say it was made in fraud, as Capt. Tyler would say, *per se*, but it was made contrary to the wishes of the people of Texas. And the President, in any other country but Texas, would have been impeached and removed from office. The bill which has been alluded to had passed almost unanimously the representatives of the people; it was vetoed by the President, and passed over his head: and yet in utter contempt of the wishes of the people, he made this contract with Charles Fenton Mercer, which gave him 3,500,000 acres of land. I do not wish to believe that he took a bribe; it was his self-will which induced him to carry out his own feelings, his own views and wishes; and then as in many other instances, he chose to show his contempt for the people. Now suppose this matter to be investigated before the Congress of the United States, and that the contract of Charles Fenton Mercer is spread before them, does he come there recommended to their sense of justice? No, sir: but as one who has himself perpetrated a fraud upon the body politic of Texas. Upon the subject of the power of this Convention, I will go so far as to say, sir, and I defy any gentleman to produce authority which will contradict it, that it has never been decided in the United States either by the State Courts or the Supreme Court, that a State in framing a new Constitution has not the right to nullify any privilege she has before granted to any individual.

It was my wish that these matters should be investigated judicially; but this House having entertained a different opinion, and not having the slightest conscientious scruple upon earth with regard to our right to nullify these contracts, I shall now vote to declare them null and void.

Mr. Ochiltree moved the appointment of a committee to wait upon the sick members and receive their votes. Lost.

Mr. Latimer of R. R, moved to adjourn until half after 8 o'clock, to-morrow morning. Lost.

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

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

Thursday morning, Aug. 21, 1845.

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

Mr. Lipscomb offered the following ordinance, by way of compromise:

Be it ordained by the people of Texas in Convention assembled, That all contracts with the government of the Republic of Texas, for settling colonies be, and the same are hereby annulled from and after the adoption of this ordinance by the people.

And be it further ordained, That all persons who are actually settled under such contracts, shall be guaranteed in the quantity of land they claim under such contract: Provided, it shall not exceed six hundred and forty acres to a head of a family, and three hundred and twenty acres to single men.

And be it further ordained, That all persons aggrieved by the recision of their contracts, be authorized to sue the government of Texas to recover such premium lands as they may be entitled to.

And be it further ordained, That this ordinance be submitted to the people for their adoption, at the same time the Constitution shall be offered to them; and if ratified by them, shall be considered binding and in full force to all intents and purposes.

On motion of Mr. Parker, the rule requiring the ordinance to be read on three several days, was suspended.

On motion of Mr. Caldwell, the substitute of Mr. Love to the 21st section of the General Provisions was taken up, and

On motion of Mr. Lipscomb, the ordinance and substitute were referred to a special committee, to consist of 15 members.

Mr. Jewett offered the following ordinance:

Whereas, the various contractors who have entered into contract with the President of Texas, for settling the vacant and unappropriated lands of the Republic, have generally failed in establishing their settlements, and giving that protection to the frontier contemplated by the terms of