

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

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

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to rarebooks@law.utexas.edu.

If you are uncertain whether you need permission to use these materials, please contact us at rarebooks@law.utexas.edu.

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 rescission 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

their contracts : and whereas, the continuance of these contract is highly detrimental to the public interest:

Therefore, it is resolved expedient to submit the following ordinance to the people of Texas, to be voted upon at the same time when they may vote, for the adoption of the State Constitution ; and if a majority of the qualified voters shall vote in favor of this ordinance, then the same shall have the force and effect of a law, from the time the people shall vote thereon.

ORDINANCE.

Be it ordained and decreed by the people of Texas, That all colonization contracts for settling the vacant and unappropriated lands of the Republic of Texas, heretofore made with the President thereof, shall cease from and after the adoption of the State Constitution by the people of Texas, but the rights to lands of actual settlers introduced by the contractors within the limits of any colony before the adoption of this Constitution by the Congress of the United States, are hereby guaranteed, and the contractors shall have titles granted them for their premium lands, in proportion to the number of colonists introduced and settled within their respective colonies, so soon as they may have established in the courts that their contracts were constitutional and legal, and that they have complied with the conditions of the same.

Mr. Cozneau moved a suspension of the rule requiring the ordinance to lay on the table one day, which was carried; and the ordinance taken up and referred to the special committee on colonization contracts.

Mr. Rusk moved that the committee just raised consist of 15 members. Carried.

On motion of Mr. Mayfield, the select committee was instructed to take into consideration the report of the Commissioner of the General Land Office, and particularly that part relating to the 24,331,764 acres of land supposed to be located by fraudulent certificates.

Mr. McNeil offered the following as an additional section, to come in after the 21st section of the General Provisions:

" All titles to land granted by the government of Mexico, or of Coahuila and Texas, under the colonization laws or otherwise, lying within the limits of this State, and which shall not be recorded, or filed for record in the recorder's office of the respective counties in which the land lies; within one year from the meeting of the first Legislature, under this Constitution, shall be forever barred, and be considered vacant: Provided, that the titles of lands of minor heirs, and *femes covert*, may be exempted from the provisions of this article in such manner as the Legislature shall direct."

Which, on motion of Mr. Van Zandt, was referred to the Judiciary committee.

Mr. Wright offered the following as an additional section, to come in after the 21st section of the General Provisions:

"In all suits where a citizen of this State may be a party litigant against any contractor, empresario, or other description of grantees, it may and shall be lawful for the person claiming, to set forth any plea that it would be competent for the State to do, and the party may introduce testimony to prove the claim to be forfeited, as well for the illegality or unconstitutionality, as on account of failure to comply with the conditions of the original grant, and the pleas shall be deemed good and valid, in all such suits in this State."

Which was referred to the committee of fifteen, to whom was referred the section and substitutes in relation to the colonisation contracts.

Mr. Cazneau moved to lay the report of the General Provisions on the table. Lost.

On motion of Mr. Lusk, his additional section to the General Provisions in relation to the appointment of tax collectors and assessors was taken up.

Mr. Darnell moved to insert, after the word "taxes," "alloverseers of roads."

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

Ayes—Messrs. Burroughs, Cunningham, Cuney, Darnell, Evans, Hicks and Latimer of R. R.—7.

Noes—Messrs. President, Anderson, Armstrong of R., Baylor, Bagby, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Everts, Forbes, Gage, Hemphill, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Latimer of L., Love, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—40.

So the amendment was lost.

Mr. Rusk moved to amend by adding to the section the words "by and with the advice and consent of two-thirds of the Senate." Carried, and

On motion of Mr. Rusk, the word "*annually*" was stricken out, and the word "*biennially*" inserted.

Mr. Rusk said: I hope the section will not pass. We shall be thrown entirely upon the direct taxes for the support of the government. The office of collector and assessor is a very pitiful office, and not worth going before the people for. Let the responsibility rest with the Governor, and he will elect such men as will discharge their duty. If things go on as they have done, what has occurred will occur again. I have heard a certain county charged with not paying its taxes, when, to my

certain knowledge, they have been paid, but have not been handed over. The adoption of this section will do away with a great deal of heart-burning.

Mr. *Darnell* said: This office of collector and assessor may become a very important office; and we are not fixing this matter for the time being only: we are giving the Governor of Texas in this Constitution a patronage of about three hundred appointments. I contend that this will eventually be an important office, and one by which influence might be wielded, and perhaps improperly. As regards the collection of taxes, perhaps a similar plan might be best for the next two, or perhaps ten years. But let us give the power to the Legislature, and not to the Governor.

Mr. *Jones* said: I agree with the gentleman in his general argument, but I differ widely in the conclusion. In one sense this office is of importance at this time, though unimportant so far as it regards the honor and emoluments connected with it. Unless some mode of this kind is provided, judging by the history of the past, it will be impossible to collect enough to support the government. Unless these officers are made entirely independent of the people, you will never receive the money collected by them, and in many instances it will never be collected. I believe that, though this is an unimportant matter to the holders of these offices, it is very important to the prosperity of the country, that some way be provided to place them beyond the reach of the people. With regard to the patronage of the Governor, I differ entirely from the gentleman from San Augustine. It is true that the Governor has the nomination, in the case referred to, but the Senate has the appointment; and two-thirds of that body I think a sufficient check upon him. You place responsibility upon the Governor, without any power whatever. He is responsible for the good and bad appointments he may make, but has very little control over the matter.

Mr. *Cunningham* said: I hope it will not be adopted. There has been no Constitution adopted upon the American continent which has evinced so great a distrust of the Legislature as this: and, I venture to say, none which have reposed such unlimited confidence in the Executive. It is through the office of tax-collector that the whole money of the State goes into the treasury of the State, and that treasury if used properly, may give a vast authority to the Governor. I can see no reason why a provision like this, new and unknown to any Constitution in America, should be inserted in ours. I do not know how to account for this exceeding distrust of the Legislature, coupled with the most unbounded confidence in the Executive, unless it proceeds from a want of confidence in the people. If the people are dishonest, will not the Governor be likely to be more dishonest? I think the nearer we approach the people, the more certain we shall be to have honest officers.

Mr. *Rusk* said: I hear so much said about the Governor's being a very bad man, that I will move to strike out "Governor" and insert "Treasurer." I am not so much afraid of the people as some gentlemen: but I do not wish to trouble the people with the election of every thing. I knew a neighborhood in which the people went so far as to elect certain old women to perform certain duties.

Mr. *Anderson* said: I hope the section as it originally stood with the amendment of the gentlemen from Nacogdoches will prevail. The fears of the gentleman from Victoria do not operate upon me. If we are to have a Governor, we must give him some authority and some power, to make the office respectable, and to get the best talent in the country to fill it. We have a sufficient check to control his actions. The simple question here is, what is the best method to arrive at a speedy collection of the public revenue? This, then, is certainly the best. The Governor is responsible to the people for his acts; all officers appointed by him are responsible to him, and he to the people. But if you give this appointment to the treasurer, you create a petty Governor, which is not compatible with the institutions of our country. I do not wish to have two officers exercising patronage: if it is to be given at all, let it centre in one individual. In proportion as we diverge from unity, responsibility ceases. Where an appointment is made by the treasurer, the Governor will have to sustain the evil if any exists; and if he has to sustain the evil, let him have the appointment.

After some further debate,

Mr. *Rusk* moved to strike out "Governor" and insert "Comptroller."

Mr. *Van Zandt* moved as a substitute for Mr. *Rusk's* amendment, that the word "Comptroller" be stricken out, and the "qualified electors of each county elect their own assessor and collector."

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

Ayes—Messrs. *Anderson*, *Armstrong of J.*, *Armstrong of R.*, *Baylor*, *Bache*, *Barroughs*, *Clark*, *Cunningham*, *Cuney*, *Darnell*, *Evans*, *Everts*, *Gage*, *Holland*, *Hunter*, *Irion*, *Jewett*, *Lewis*, *Larkin*, *Maffield*, *McGowan*, *McNeil*, *Navarro*, *Runnels*, *Standefer*, *Van Zandt* and *White*—27.

Noes—Messrs. *President*, *Bagby*, *Brashear*, *Caldwell*, *Forbes*, *Hemphill*, *Hicks*, *Hogg*, *Horton*, *Howard*, *Jones*, *Love*, *Lusk*, *Lipscomb*, *Miller*, *Parker*, *Power*, *Rains*, *Scott*, *Smyth*, *Tarrant*, *Ochiltree* and *Young*—23.

So the amendment was adopted.

The question was then taken on Mr. *Van Zandt's* amendment, as an amendment of the resolution of Mr. *Lusk*.

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

Ayes—Messrs. Armstrong of J., Armstrong of R., Baylor, Burroughs, Caldwell, Clark, Cunningham, Coney, Darnell, Evans, Everts, Gage, Hicks, Holland, Hunter, Irion Jewett, Latimer of L, Lewis, Lumpkin, McGowan, McNeil, Navarro, Standefer, Van Zandt and White—26.

Noes—Messrs. President, Anderson, Bache, Brashear, Bagby, Cazeau, Forbes, Hemphill, Hogg, Horton, Howard, Jones, Love, Lusk, Lipscomb, Mayfield, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Tarrant, Ochiltree and Young—26.

So the amendment was lost.

Mr. Hemphill moved to amend the section, by giving the election of assessors and tax collectors to the joint vote of both houses of the Legislature.

Mr. Cunningham moved the previous question, which was carried.

The ayes and noes were then called for on the adoption of Mr. Lusk's section, as amended, and were as follows:

Ayes—Messrs. President, Anderson, Bache, Brashear, Bagby, Brown, Cazeau, Everts, Forbes, Hemphill, Henderson, Horton, Howard, Jones, Love, Lusk, Lipscomb, Mayfield, Miller, Parker, Power, Rains, Runnels, Smyth, Tarrant, Ochiltree and Young—27.

Noes—Messrs. Armstrong of J., Armstrong of R., Burroughs, Caldwell, Clark, Cunningham, Coney, Darnell, Evans, Gage, Hicks, Hogg, Holland, Hunter, Irion, Jewett, Latimer of L, Lewis, Lumpkin, McGowan, McNeil, Navarro, Scott, Standefer, Van Zandt, and White—27.

So the section was lost.

On motion of Mr. Hicks, the Convention adjourned until 4 o'clock, p. m.

4 o'clock, p. m.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

The President of the Convention announced the following special committee, to which the several ordinances offered this morning were referred:

Messrs. Lipscomb, Love, Henderson, Mayfield, Hogg, Caldwell

Smyth, Irion, Van Zandt, Lusk, Jewett, Lewis, Miller, Rains and Wright—15.

On motion of Mr. Young, the President was added to the committee.

Mr. Hemphill, from the Judiciary committee, made the following report:

Committee Room, Aug. 21, 1845.

To the Honorable THOS. J. RUSK,

President of the Convention:

The Judiciary committee, to whom was referred a resolution of inquiry into the expediency of declaring in the constitution that all certificates for head rights, and all claims, grants and evidences of title to land issued to fictitious persons, or forged are, and the same were null and void from the beginning, have had the same under consideration, and instructed me to report the following substitute:

1st. All certificates for head right claims to land, issued to fictitious persons, or which were forged, and all locations and surveys thereon, are, and the same were null and void from the beginning.

2d. The District Courts shall be opened until the close of the year one thousand eight hundred and forty seven, for the establishment of certificates not recommended for patent, as genuine and legal, and the party suing shall produce the same proof, and be subject to the requisitions which were necessary, and were prescribed by law, to sustain the original application for the said certificate; and all certificates above referred to, not established, or sued upon before the period limited, shall be null and void.

Respectfully submitted,

JOHN HEMPHILL, Chairman.

Mr. Young offered the following resolution:

Resolved, That all locations and surveys of land made previous to the 21 day of March, 1836, and lying north of the Sabine river, and within the twenty border leagues, were illegal, and contrary to the policy of the country, and against good morals; and are thereby declared null and void.

Which was read, and laid on the table one day for consideration.

On motion of Mr. Wright, the report of the committee on General Provisions was taken up.

Mr. Wright offered the following as an additional section :

" It is hereby declared, that no admission made by any Attorney General, District Attorney, or other agent representing the interest of the State of Texas, shall, in any suit against the State, having for its object the recovery of any grant of land, made either by the government of Mexico, or the State of Coahuila and Texas ; nor shall any admissions heretofore made by any officer of the Republic of Texas, representing the interest of the Republic, be admitted as valid in any suit or action against this State or any of its citizens, but shall be deemed an assumption of power not delegated him, and of no effect "

Mr. Cunningham moved to refer the additional section of Mr. Wright to the special committee of 15 appointed this morning.

Lost.

And, on motion of Mr. Cunningham, it was laid on the table.

On motion of Mr. Standifer, the additional section as offered by himself, prohibiting the increase of the salaries of the Judges and Governor for ten years, was taken up.

Mr. Forbes moved to insert the word "diminish" in the section.

Mr. Mayfield moved a call of the house, which was carried; and

On motion of Mr. Brown, a further call was suspended.

The question was then taken on the amendment of Mr. Forbes, inserting the words "not diminish."

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

Ayes—Messrs. President, Brashear, Caldwell, Cazneau, Cunningham, Everts, Forbes, Hemphill, Henderson, Horton, Hunter, Love, Lumpkin, Lipscomb, Mayfield, McNeil, Navarro, Smyth, Ochiltree and White—20.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Bagby, Brown, Burroughs, Clark, Cuney, Darnell, Gage, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, Power, Rains, Scott, Standifer and Young

—27.

So the amendment was lost.

Mr. Smyth moved to strike out the word "Governor."

Lost.

The question was then taken on the adoption of the additional section. Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bache, Bagby, Burroughs, Clark, Darnell, Evans, Gage, Henderson, Hicks, Hogg, Horton, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin; Lusk, McGowan, Rains, Standifer and Ochiltree—29.

Noes—Messrs. Armstrong of J., Brashear, Brown, Caldwell, Cazneau, Cunningham, Cuney, Forbes Hemphill, Lipscomb, Mayfield, McNeill, Navarro, Power, Scott, Smyth, White and Young—19.

So the motion was adopted.

Mr. Caldwell offered the following as an additional section:

“The county court shall appoint an assessor of taxes, and a tax collector for each county, under such regulations as may be prescribed by law.”

Mr. Young offered the following as a substitute for Mr. Caldwell's additional section, which was accepted:

“The assessor and collector of taxes, shall be appointed in such manner and under such regulations as the legislature may direct.”

Mr. Everts moved the previous question, which was carried.

The main question being the adoption of Mr. Young's substitute to Mr. Caldwell's additional section, was carried and the substitute adopted.

Mr. Gage offered the following resolution:

Resolved, That the committee on printing be instructed to contract for and cause to be printed _____ copies of the state constitution for the use of the members of this convention.

On motion of Mr. Young, the rule requiring resolutions to lie on the table one day for consideration, was suspended.

On motion of Mr. Gage, the blank in the resolution was filled with 1,000, and the resolution adopted.

On motion of Mr. Rusk, the vote adopting the additional section offered by Mr. Standifer, was reconsidered.

On motion of Mr. Cunningham, the convention adjourned until half past 8 o'clock to morrow morning.

Friday, morning, Aug. 22, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Lipscomb, chairman of the select committee, to whom was referred a separate ordinance in relation to contracts with the government of Texas for settling colonies, &c., made the following report:

Committee Room, Aug. 22, 1845.

To the Hon. THOS. J. RUSK,

President of the Convention :

The select committee, to whom was referred a separate ordinance in relation to contracts with the government of Texas for settling colonies, together with a substitute for the same; also the 21st section of the General Provisions, together with the several amendments and substitutes, &c., have had the same under consideration, and have instructed me to report in part that a majority of the committee are of the opinion that whatever action the Convention may take on the subject embraced by the matter referred to them, should be by a separate ordinance; should the Convention be in favor of the action, by a separate ordinance, the committee will prepare one for that purpose. But should the Convention prefer embracing the object as an article in the Constitution, the committee will prepare and report an article for that purpose to the Convention.

I am instructed to ask the sense of the Convention as to the choice of modes.

ABNER S. LIPSCOMB, Chairman.

Upon a point of order being made, it was decided that reports of committees were required to lay on the table, and come up among the orders of the day.

Mr. Young moved to suspend the rule requiring the report to lay on the table. Lost.

Mr. Mayfield presented the memorial of Commodore E. W. Moore, which was read.

Mr. Mayfield said: I will submit this memorial with a very few remarks. It is well known to every gentleman upon this floor, that this