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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

gallant officer, while in the service of this government, was arrested upon certain charges, and deprived of his office. He then appealed to the Legislature of the country, and asked that he might have a hearing, and that there might be a fair and impartial investigation of the subject. The Congress of the nation established a tribunal for that purpose, which met, and investigated these charges, and pronounced a judgment which was disapproved of by the chief magistrate of the country. Subsequently to this, the matter was taken into consideration by Congress, who exonerated him from the charges preferred against him, and exempted him from the effects, and that solemn act was likewise disapproved of by the chief magistrate. Again was the subject referred as directly as possible to the people themselves through their representatives, and they in the most solemn manner testified to the services rendered by this officer, and to the devotion with which he sacrificed himself and his fortune in the service of this State; and even that solemn act of the representatives of the people likewise met the disapprobation of the Executive. Under these circumstances, as he is a citizen of Texas, feeling as such, and as a patriot, and at all times nobly devoted himself to the service of his adopted land, and inasmuch as we are now about to lose our separate nationality and mingle with that great and glorious Union from which he sprang, by which he will be thrown back upon his native land, I think it our duty to render him, at least in the expression of our opinion, that justice to which as a soldier and a patriot we consider him entitled. This is the last opportunity which will be afforded us to express an opinion which may in some degree relieve him from imputations unjust in themselves, and oppressive in their bearing upon him. It is unnecessary to remind this Convention of the gallant bearing of this man upon all occasions when his country has been endangered, or her liberties threatened. It is unnecessary to point to the fact that he fills a high place among her naval and military heroes, and that he has perhaps contributed, if not more, as much as any other to add to the brightness and splendor of her national flag. He then, upon this occasion, even at this late period in the session of this body, feels himself imperiously called upon to submit his case, in respectful but plain language, to the consideration of the Delegates of the people here in Convention assembled, that they may take such action in the matter as may seem consonant with wisdom, and justice. In submitting this petition, I ask that it may be referred to a select committee, and at the same time, as the relations between that gallant officer and soldier and myself have been of the most intimate and friendly character, and as I was his counsel and advocate during the trial to which I have alluded, that I may be exempted from constituting a member of that committee.

On motion of Mr. Mayfield, it was referred, with the accompanying documents, to a select committee.

Mr. Horton offered the following resolution :

*Resolved*, That ——— numbers of the Constitution of of the State of Texas be printed in the Castilian language for the use of the population on our western frontier, and that the committee on printing be authorized to contract for the same.

On motion the rule was suspended.

On motion of Mr. Parker, the blank was filled with "500," and the resolution adopted.

Mr. Young offered the following article :

It is hereby declared the duty of the Attorney General of this State so soon as the organization of the same shall be completed, to institute legal proceedings against all colony contractors, and if upon investigation, all or any one of the colony contracts shall appear to have been unconstitutional, illegal, or that the conditions of said contracts, or either of them, shall not have been strictly complied with, they or either of them shall be declared null and void, provided that all settlers under the contracts shall be entitled to their lands as colonists, provided the same shall not exceed 640 acres of land to heads of families, and 320 acres to single men.

Sec. 2. In all suits when a citizen of this state may be a party litigant against any contractor, empresario, or other description of grantees, it 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 have been forfeited, as well for the illegality, unconstitutionality, or on account of failure to comply with the conditions of the original grant, and the plea shall be good and valid in all such suits in this State.

On motion of Mr. Lewis, the articles were referred to the select committee, to which was referred the subject of colonization contracts.

Mr. Gage offered the following resolution :

*Resolved*, That James H. Raymond, Secretary of the Convention, be instructed to draw upon the Secretary of the Treasury of the Republic of Texas, for ——— dollars, the per diem pay and mileage of the Deputies in the Convention and officers of the same, to the 25th inst., inclusive, and disburse properly the same.

On motion of Mr. Love, the words "Secretary of the Treasury" were stricken out, and "Treasurer" inserted.

On motion of Mr. Gage, the resolution was laid on the table.

Mr. Wright offered the following resolution :

*Resolved*, That no motion for a re-consideration of any resolution or

provision, once adopted, shall prevail, unless sustained by two thirds of the Convention.

Which was laid on the table one day for consideration.

On motion of Mr. Van Zandt, the article on General provisions was taken up

Mr. Armstrong of J., moved a r<sup>e</sup> consideration of the vote adopting the 22d section. Lost.

Mr. Hogg offered the following as an additional section :

There shall not be more than three land offices in the State. There shall be a general land office established at the seat of government of the State; one subordinate land office in the town of Nacogdoches, in the county of Nacogdoches, and one subordinate land office in the western portion of the State, at such place as may be directed by law, whenever the Legislature shall deem it expedient; each of which land offices shall be subject to such regulations as the Legislature may by law direct.

Mr. Young moved to amend by striking out "Nacogdoches," and inserting "Clarksville."

Mr. Forbes moved to lay the additional section and amendment on the table.

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

Ayes—Messrs. Anderson, Armstrong of J., Baylor, Bagby, Bache, Brashear, Bürroughs, Caldwell, Cazneau, Cunningham Cuney, Everts, Forbes, Hemphill, Hicks, Horton, Howard, Hunter, Irion, Latimer of L., Latimer of R. R., Lewis, McGowan, McNeil, Navarro, Power, Runnels, Scott, Smyth, Tarrant and Wright—31.

Noes—Messrs. President, Armstrong of R., Brown, Clark, Darnell, Evans, Gage, Hogg, Jewett, Love, Lumpkin, Lusk Lipscomb, Mayfield, Parker, Rains, Standefer, Ochiltree, Van Zandt, White and Young—21.

So the additional section was laid on the table.

Mr. Cunningham moved to add the 3d, 4th and 5th sections of the Schedule to the General Provisions.

Mr. Horton moved to amend the 4th section by adding "and all such forfeitures and escheats shall be applied for the purpose of creating a common school fund."

Mr. Van Zandt moved the previous question.

The chair [Mr. Darnell] decided that the previous question would be upon the adoption of Mr. Cunningham's amendment.

On motion of Mr. Rusk, the General Provisions was laid on the table.

On motion of Mr. Rusk, the report of the select committee, Mr. Lipscomb chairman, upon the subject of colonization contracts, was taken up.

Mr. Ochiltree moved to instruct said committee to report an ordinance.

Mr. Hagg said: Mr. President, inasmuch as I have hitherto said nothing upon this vexed question, I will attempt now to give my views upon this subject as concisely as possible. I feel as much as any man in this Convention the responsibility which I am under to my constituency and my country, and believing, as I do, that this question is one of more interest and importance than any which has arisen or will arise during the session of this body, I deem it proper that I should define my position upon the subject. I believe that we are now about to approach one of the most sacred questions which can be agitated. If we incorporate anything in this Constitution repugnant to that of the United States, we are bound to suffer the consequences. The Congress of the United States will return our Constitution to Texas for amendment. Every member of this Convention certainly knows that the people of Texas are now wholly and heartily engaged upon the subject of annexation, and are desirous that we should take the most certain and practicable steps for its consummation. The question then arises whether we shall insert in this Constitution which is to be the fundamental law of the land, an article which has been decided by men as learned in the law as any in this republic to be repugnant to the Constitution of the U. States. Is this a mere matter of fancy? Are men, sir, disposed to sport with the privileges dependant upon the speedy consummation of our union with the great American republic? Are they willing to take the bull by the horns, and incur the responsibility of having this Constitution as adopted returned, and suffer the consequences? I ask gentlemen to take a view of the state of things which would present itself in that event. It has been urged by many of our citizens, that this country has too long knocked at the door of the American Union for admission. It has been urged by individuals not now boldly and avowedly opposed to the measure that annexation is impracticable. Then if you thus throw open the door to these men by inserting an article in your Constitution which will cause it to be returned upon your hands, in my opinion they will not, as now, keep dark, but will come up in solid phalanx in opposition to annexation. Some men of standing in the country will take the lead, and all their influence to create a powerful opposition. Sir, gentlemen are sporting with the question of annexation, the matter of all absorbing interest to this country. Then why will they say that they are determined to insert in the Constitution of Texas, an article which is determined by men as much entitled to respect for their legal

learning and constitutional knowledge as any men in the land, to be in conflict with the Constitution of the United States. If gentlemen are so anxious to insert a provision of this kind, let us establish it as an ordinance. Then the body of the Constitution will remain perfect, and the rejection of this provision cannot immediately injure the annexation of Texas. I consider the question to be this, whether annexation is of the most importance, or whether it is of more importance that these colonization contracts should be declared void. It has been asserted by some as good patriots as any among us, that they would be willing to give up all their lands, rather than be thwarted in this measure of annexation. I believe, sir, that my constituents would rather give up all the public domain, than to fail in this matter. I would cheerfully give up what lands I have, rather than have that event procrastinated for six months. The eyes of the civilized world are upon us; and if we disagree among ourselves, what consequences may we not look for? Gentlemen say that the incorporation of this measure by way of an ordinance will cast suspicion upon it. Admit that it will throw suspicion upon it with regard to its constitutionality and legality, do gentlemen for a moment suppose that the eagle-eyed politicians of the U. States will not as soon discover its character in the Constitution as in an ordinance? I am perfectly willing to insert it by way of ordinance. I am as much opposed to these contracts as any one, but I am not willing on this account to risk the success of annexation.

Mr. Cazneau moved a call of the Convention.

Lost.

The yeas and noes were called on Mr. Ochiltree's motion, and were as follows:

Yeas—Messrs. President Bache, Burroughs, Cunningham, Coney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Holland, Irion, Lewis, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Power, Rains, Scott, Sinyth, Standefer, Ochiltree and Young—30.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Brown, Caldwell, Cazneau, Clark, Evans, Horton, Hunter, Jewett, Latimer of L., Latimer of R. R., Love, Lumpkin, Mayfield, Runnels, Tarrant, White, and Wright—22.

So the motion was carried.

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

4 o'clock P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Cazneau, the report of the committee on Education was taken up.

Mr. Lusk moved to strike out all after the word "state," in 2d line, 2d section.

Mr. Clark said: As I consider it perhaps my duty, I will say a few words in vindication of my course upon this subject. The part which the gentleman from Brazos proposes to strike out does not meet my hearty approbation. It did not in the committee; though I did not there object to it, knowing that I should have the opportunity here of expressing my dissent and acting accordingly. I think the motion of the gentleman a very proper one. I think unless we adopt it we shall be taxing the people too severely in the commencement. We must recollect that the amount to be derived from the people through taxation is very considerable; and I think that perhaps as far as we should go on this occasion. I intend to vote for the motion of the gentleman from Brazos to strike out, and as chairman of the committee I have thought it my duty to apprise the Convention of the reasons why I shall do so. The report requires no explanation; it is plain and simple.

The ayes and noes were called upon the motion of Mr. Lusk, and stood as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Brown, Burroughs, Clark, Darnell; Gage, Hemphill, Hicks, Hogg, Irion, Latimer of L., Latimer of R. R., Lumpkin, Lusk, McNeill, Navarro, Parks, Rains, Runnels, Scott, Smyth, Van Zandt, White Wright and Young—27.

Noes—Messrs. President, Anderson, Baylor, Bache, Caldwell, Cazneau, Cunningham, Evans, Everts, Forbes, Henderson, Horton, Howard, Hunter, Jewett, Lewis, Love, Lipscomb, Mayfield, McGowan, Power, Standefer and Tarrant—23.

So the motion was carried.

Mr. Mayfield offered the following as a substitute for the second section:

The legislature shall, as early as practicable, establish free schools throughout the state, and shall furnish means for their support, by taxation on property, and it shall be the duty of the legislature to set apart not less than one-tenth of the annual revenue of the state derivable



from taxation, as a perpetual fund, which fund shall be appropriated to the support of free public schools throughout the State, and no law shall ever be made diverting said fund to any other use; and until such time as the legislature shall provide for the establishment of such schools in the several districts of the State, the fund thus created shall remain as a charge against the State, passed to the credit of the free common school fund.

Mr. Lewis offered the following as an amendment to the substitute:

Provided that the aforesaid fund shall be appropriated to the education of the children of those who are themselves unable to bestow upon their children the rudiments of an English education.

Rejected.

Mr. Forbes moved to amend by inserting "from and after the year 1850."

Lost.

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

Yeas—Messrs. President, Anderson, Armstrong of R, Baylor, Barthe, Brashear, Caldwell, Cazneau, Cuney, Evans, Events, Forbes, Gage, Hemphill, Henderson, Horton, Holland, Hunter, Irion, Jewett, Lewis, Love, Lipscomb, Mayfield, McGowan, McNeil, Navarro, Standefer, Tarrant and White—30.

Noes—Messrs. Bagby, Burroughs, Clark, Darnell, Hicks, Hogg, Howard, Latimer of L., Latimer of R. R., Lumpkin, Parker, Rains, Runnels, Scott, Smyth, Wright and Young,—17.

Mr. Gage offered the following as an additional section:

It shall be the duty of the Legislature to pass a law by which counties now in this State, which have not heretofore received grants of land shall be entitled to a donation of land for school purposes, equal to that heretofore granted to any county by the Congress of the Republic of Texas.

In presenting this additional section,

Mr. Gage said: Four leagues of land have been granted to most of the counties in the Republic for school purposes. The law now in existence upon this subject is a general one, extending such a donation to all the counties created at the date of its passage. Some new counties,

however, have been since formed, among which is the county of Rusk, to which the present law does not apply. It is the object of this section to place them on a footing with the older counties. An equal quantity of land is all that I ask for them, and I trust it will not be denied.

Mr Everts moved to amend by confining the locations of the land in the county for whose benefit the land is appropriated.

Lost.

On motion of Mr. Young, the word "now" in the first line of Mr Gage's additional section, was stricken out.

The ayes and noes being called on the adoption of the additional section, stood thus:

Ayes—Messrs. President, Baylor, Bache, Bagby, Cazneau, Clark, Cunningham, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hurter, Irion, Jewett, Jones, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Mayfield, McGowan, Navarro, Power, Runnels, Smyth, Standefer, White and Young—34.

Noes—Messrs. Anderson, Burroughs, Caldwell, Latimer of L., Lipscomb, McNeil and Scott—7.

So the section was adopted.

Mr. Darnell offered the following as an additional section:

Fifty leagues of land of the public domain of Texas, in addition to the amount already set apart by law, is hereby reserved for the use of common schools, to be used as the legislature may direct, but no disposition shall be made of the same under fifty years from the adoption of this Constitution. The legislature may authorize the lands to be located at as early a day as possible, and to make them as valuable as circumstances will admit, by lease or otherwise.

On motion of Mr. Hemphill, the following words were inserted:

"Provided the debts and liabilities of the government be first discharged."

The President announced the following as the committee on the memorial of Commodore E. W. Moore:—Messrs. Love, Runnels, Cazneau, Horton, Caldwell, Brown and Wright.

Messrs. Love, Horton and Runnels were excused, and Messrs Anderson, Jewett and Everts were appointed in lieu of them.

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