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Saturday Morning, Aug. 23, 1845.

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

Mr. Lipscomb, from the special committee, made the following report:

Committee Room, August 20, 1845.

To the Hon. T. J. Rusk,  
*President of the Convention:*

The select committee to whom was referred an ordinance on the subject of contracts for settling colonies made with the government of Texas, also the substitute as amended by the Convention for the 21st section of the General Provisions, and the substitute offered and several resolutions in relation to the subject, have had the same under consideration, and in obedience to the instructions given, beg leave to report that this committee would respectfully recommend that the 21st section of the General Provisions, and the substitute and amendments thereto, and the one offered be rejected, and they recommend the adoption of the separate ordinance heretofore reported in lieu of the same.

All of which is submitted.

ABNER S. LIPSCOMB,  
Chairman of Select Committee

### ORDINANCE.

Whereas, various contracts have been entered into by the President of the Republic of Texas with divers individuals, with the expressed intention of colonizing an enormous amount of the public domain of Texas; and

Whereas it is believed that said contracts are unconstitutional and therefore void from the beginning, and in their operations, if carried out, would operate as a monopoly of upward of seven millions of acres of the public domain of Texas in the hands of a few individuals, who in truth the citizen soldiers and creditors of the Republic of Texas, had, by the laws and constitution of said republic, a clear and indisputable previously subsisting right to locate upon the public domain thus attempted to be assigned to said contractors; therefore,

It is hereby ordained and declared, That it shall be the duty of the Attorney General of this State, or the district Attorney of the district in which any portion of the colonies may be situate, as soon as the or-

ganization of the State shall be completed, to institute legal proceedings against all colony contractors who have entered into contracts with the President of Texas, and if upon such investigation, it should be found that any such contract was unconstitutional or illegal in its inception, or that the conditions of the same had not been complied with according to its terms, such contract shall be adjudged and decreed null and void: provided, however, that all actual settlers under any such contract shall be entitled to their quantity of land as colonists, not to exceed six hundred and forty acres to the head of a family, and three hundred and twenty acres to a single man.

And in all such suits brought by or against any contractor, it shall be lawful for the adverse claimant to set forth any plea that it would have been competent for the State to plead, and the party may introduce testimony to prove the claim or title to have been forfeited, as well for frauds or illegality or unconstitutionality in its inception, on account of a failure to comply with the conditions of the original grant or contract, and any such pleas shall be deemed good and valid in law in all such suits in this State.

And be it further ordained, That this ordinance shall be presented to the people for their adoption or rejection at the same time this Constitution shall be presented to them, and the returns of the votes taken on this ordinance shall be made to the office of the Secretary of State of the Republic of Texas at the same time the votes for the Constitution may be returned.

On motion of Mr. Lewis, the report of the special committee and ordinance were taken up.

Mr. Mayfield offered the following as a substitute to the ordinance of the special committee:

Be it ordained, &c., That all colonization contracts made by the Secretary of State or the President of Texas with any undertaker or contractor for the settlement or colonization of any portion of the unappropriated or vacant lands of the country, are declared voidable, and shall be suspended and cease from and after the adoption of this ordinance by the people of Texas; nothing, however, herein contained shall be construed to limit or prejudice the rights to land of any actual settler or colonist living within the limits of any of said colonies, and who were introduced or emigrated under the provisions of said contracts; provided always, that the legislature shall have power to pass laws defining the mode and manner by which said contractors may sue or be sued either for the purpose of recovering any indemnity to which they may be equitably entitled, and ascertaining their respective rights to premium lands, or for the purpose of fully vacating and annulling any and all of said contracts.

Mr. Lipscomb offered the following amendment :

Strike out "or other description of grantee," which would leave it to the colonization contracts only.

Mr. Love made some remarks in favor of the amendment, and Messrs Wright and Cunningham spoke in opposition to it.

Mr. Jones made some remarks not heard by the Reporter, and continued as follows :

I know something about these transactions at Montclova, and something about these eleven league grants. But because there has been fraud in some instances, would you rob those who have innocently acquired the title to their lands? Those who talk so much about these matters, in my opinion, know very little about them, if I may judge from their arguments. I am unwilling, sir, for the sake of half a dozen individuals who may wish to steal lands, to be compelled to establish what I cannot, that I have complied with all the requisitions of the law. Because it is well known that it was dangerous, and in fact impracticable to make the surveys required, and as to cultivating the lands, it was utterly impossible. I could perhaps, if necessary, give a full and accurate history of every description of land claims. but, on this occasion I will only say, that if these provisions or directions, for I do not know what to call them, shall be adopted and become a part of the Constitution or an ordinance, I, as an individual who have been here since the year 1822, and have honestly acquired my lands, will never defend any suit which may be brought against me. Much has been said, and much beautiful argument advanced, in relation to the poor soldier who has waded through blood and all that, and it is perhaps calculated to have a wonderful effect upon the members of this body. I, sir, unfortunately, have none of this honor. I came at an early period, as early as 1822; I expended three-fourths of my labors for years in defending and protecting my adopted country: I can say what some gentlemen here know to be the fact, that there have been few campaigns in which I did not participate. But unfortunately for myself, my health was such in '36, that I was not in the battle of San Jacinto, or any other fight of that period. At the same time I had richly earned all the lands which I have acquired, previously to 1836. If it should be the sense of the Convention to adopt a clause like this, which will sweep away my claims, I shall feel perfectly satisfied; and I pledge myself before God that I will not defend one of them.

Mr. Young said: I am pleased with the candor of the gentleman last up. He is the first individual I have seen who would honestly admit that he owned an eleven league claim. He tells you that if the

ordinance passes, he for one will not contend for his claims. He tells you that he paid his money for them, and he tells you that there were conditions attached to them, with which he had not complied; because, he said, he looked upon them as trash, many of them, and many of them were disagreeable, and he would not comply with them. Now he contends that he is willing to place his claims at issue under the laws of the Republic; and if he is able to find a law which will protect a claim when it goes beyond a league and labor, he has seen what I have not. He insists that you shall not place the actual settler upon the same footing that he himself is. After having declared that he himself had not complied with the conditions and restrictions annexed to his grant, he asks that he may be placed above the citizens who may chance to settle upon it. I ask if this is just? It is not my object, nor that of introducing this section to interfere with any just and genuine claim. It is not the intention to interfere with claims amounting perhaps to four leagues for services rendered. As far as they are concerned, I have no objection to leaving them out of the question. But in relation to these eleven leagues, where they were granted for 200 dollars a league, I do contend for a rigid performance of the conditions, or that they shall revert back to the State.

Mr. Jones said: The gentleman confirms me in the opinion I have expressed, that those who have said the most about these matters, know the least. He says these claims were purchased for 200 dollars, I say, sir, without fear of contradiction, that the government received much more for these claims. I wish it to be understood that the legislature of Coahuila and Texas, the government being short of funds, authorized the Governor of the State to sell to Mexican born citizens certain quantities of land for the purpose of raising a revenue. The claim which I hold is but a part of an eleven league claim; it was purchased of the citizen who received the grant and paid the government an amount which was satisfactory therefor. There may be certain conditions which have not been complied with; but the conditions are such as apply to every grant of land made from 1822 to 1836. I say again, I feel certain that there is not one individual who has complied with all the conditions of his contract. Many of them were nonsensical, and with some it was utterly impossible to comply. In many parts of the country not a rock was to be found for miles, and one of the conditions required the throwing of rocks, the pulling of grass, &c.

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

Yeas—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Conroy, Dainell, Events, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Lyon, Jewett, Jones, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan,

Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Standefer, Ochiltree and Van Zandt—41.

Noes—Messrs. Armstrong of R., Bagby, Burroughs, Cunningham, Evans, Latimer of L., Latimer of R. R., Lewis, M'Neil, Smyth, White, Wright and Young—13.

So the amendment was adopted.

The question was then taken on the substitute of Mr. Mayfield.

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

Ayes—Messrs. Anderson, Armstrong of R., Baylor, Burroughs, Caldwell, Clark, Forbes Horton, Hunter, Jewett, Latimer of L., Latimer of R. R., Love, Mayfield, McNeil, Miller, Runnels, Ochiltree, Van Zandt and White—20.

Noes—Messrs. President, Bache, Bagby, Brashear, Brown, Cunningham, Cuney, Darnell, Evans, Events, Gage, Henderson, Hicks, Hogg, Howard, Holland, Iron, Jones, Lewis, Lumpkin, Lipscomb, McGowan, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Tarrant, Wright and Young—32.

So the substitute was rejected.

Mr. Mayfield then offered the following substitute:

The Legislature shall, at its first session, pass laws providing the mode and manner by which all colonization contracts heretofore made by the Secretary of State or President of the Republic of Texas with any undertaker or contractor for the settlement or colonization of any of the vacant or unappropriated lands of Texas, as well on account of their unconstitutionality, illegality, fraud or non performance of said contracts, shall be vacated and fully annulled, and of extending to any of the said contractors the premium lands and rights to which they may have been equitably entitled, but no laws shall be passed limiting or prejudicing the rights of those who may have emigrated or settled within said colonies by virtue of said contracts to the quantum of lands to which such emigrant or settler may have been entitled.

Mr. Ochiltree moved to amend, by inserting after the word "Legislature," the words "if they deem it necessary."

Which was carried.

The President of the Convention announced that he had on his table a communication from the chief justice of Montgomery county, enclosing a certificate of the election of Charles B. Stewart, as Deputy to the Convention from said county, which was read by the secretary, and ordered to be laid on the table.

On motion of Mr. Rusk, the proviso to the ordinance reported by the

special committee on the subject of colonization contracts, was stricken out.

Mr. Van Zandt moved to adjourn until 4 o'clock, p. m. Lost.

The last substitute offered by Mr. Mayfield was then taken up.

On motion of Mr. Forbes, a call of the House was made; and,

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

Mr. Mayfield moved to adjourn until 4 o'clock, p. m.

Motion lost.

On motion of Mr. Mayfield, a call of the House was made.

On motion of Mr. Young, a further call was dispensed with.

Mr. Mayfield then moved to adjourn until 4 o'clock, p. m. Lost.

On motion of Mr. Mayfield, a call of the House was made.

On motion of Mr. Ochiltree, the Sergeant-at-Arms was despatched for absent members.

Mr. Henderson moved to adjourn until 3 o'clock, p. m. Lost.

Mr. Howard moved to suspend a further call of the House. Lost.

Mr. Hunter moved to adjourn until 4 o'clock, p. m. Lost.

The absent members having appeared, the ayes and noes were called, on the substitute of Mr. Mayfield, and stood thus:

Ayes—Messrs. Anderson, Baylor, Caldwell, Cazneau, Clark, Evans, Horton, Hunter, Jewett, Lusk, Mayfield, McNeil, Runnels, Tarrant, Ochiltree, Van Zandt and White—16.

Noes—Messrs. President, Armstrong of R, Bache, Bagby, Brashear, Brown, Burroughs, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Snyth, Standefer, Wright and Young—34.

So the substitute was rejected.

Mr. Caldwell moved to insert the word "such" before the word "suits," in the ordinance reported by the special committee.

On motion of Mr. Gage, the word "Republic" was inserted before the word "Texas," so as to read "President of the Republic of Texas."

Mr. Evans moved to strike out the last section of the Ordinance.

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

Ayes—Messrs. Baylor, Caldwell, Cazneau, Evans, Hunter, Latimer of L., Mayfield, McNeill, Navarro, Runnels and Tarrant—11.

Noes—Messrs. President, Armstrong of R., Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Latimer of R. R., Lewis Lumpkin, Lusk, Lipscomb, McGowan, Miller, Power, Rains, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White and Young—38.

So the amendment was lost.

On motion of Mr. Evans, the words "of the Republic of Texas" were inserted after the words "Secretary of State."

Mr. Evans moved to insert the words "and that this Ordinance become a part of the Convention of the State of Texas."

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

Ayes—Messrs. Anderson, Armstrong of R., Baylor, Caldwell, Evans, Howard, Hunter, Jewett, Latimer of L., Latimer of R. R., Lumpkin, Lipscomb, Mayfield, McNeil, Runnels, Tarrant, White and Young—18.

Noes—Messrs. President, Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Holland, Irion, Lewis, Lusk, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Ochiltree and Van Zandt—31.

So the amendment was rejected.

Mr. Mayfield moved to amend by inserting the following:

"And all said contracts shall be suspended and cease from and after the institution of any suit or suits provided for by this Ordinance, until the final decision and adjudication of the same."

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

Ayes—Messrs. Baylor, Caldwell, Clark, Horton, Hunter, Jewett, Mayfield, McNeil, Tarrant, Van Zandt and White—11.

Noes—Messrs. President, Anderson, Armstrong of R., Bache, Brashear, Brown, Burroughs, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Wright and Young—36.

So the amendment was rejected.

The question was then taken on the adoption of the ordinance reported by the special committee.



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

**Ayes**—Messrs. President. Bagby, Brashear, Burroughs, Caldwell, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Lewis, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Navarro, Ochiltree, Power, Rains, Scott, Smyth, Standefer, Wright and Young—31.

**Noes**—Messrs. Anderson, Armstrong of R, Baylor, Bache, Brown, Cazneau, Clark, Cunningham, Evans, Horton, Hunter, Jewett, Latimer of L, Latimer of R R, Mayfield, McNeil, Runnels, Tarrant, Van Zandt and White—20.

So the ordinance was adopted.

The question was then taken on the engrossment, and carried.

On motion of Mr. Van Zandt; the report of the committee on General Provisions was taken up.

Mr. Mayfield moved the same be read:

Lost.

Mr. Mayfield moved to adjourn until 5 o'clock P. M.

Lost.

Mr. Mayfield moved that the General Provisions be read.

Motion lost.

Mr. Anderson moved to adjourn until half past 4 o'clock P. M.

Lost.

Mr. Anderson then moved that the General Provisions be read.

The Chair decided the motion to be out of order as the question had just been taken on the same motion.

Mr. Gage appealed from the decision of the Chair.

Which appeal was lost, and the chair sustained.

The question was then taken on the engrossment of the General Provisions, and carried.

Mayfield moved to adjourn until half past 8 o'clock Monday morning.

Lost.

On motion of Mr. Howard, the Convention adjourned until five o'clock, P. M.

5 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

Mr. Ochiltree offered the following resolution:

*Resolved*, That the business not directly connected with the formation of the constitution and the passage of the ordinance directing the changing of the government, shall be postponed until the constitution shall be finally passed and signed by the members of this convention.

On motion of Mr. Young, the rule was suspended, and the resolution adopted.

Mr. Everts moved to take up the ordinance in relation to the formation of an election precinct.

The President decided the motion to be out of order, as it was not in accordance with the resolution of Mr. Ochiltree just adopted.

From which decision Mr. Everts appealed, and the chair was sustained.

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

### ORDERS OF THE DAY.

Mr. Mayfield moved that the report of the Judiciary committee, in relation to fraudulent land certificates, be first taken up.

Which motion was lost.

Mr. Cazneau moved to take up the report of the committee on the state of the nation.

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

**Ayes**—Messrs President, Armstrong of R., Baylor, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Horton, Irion, Jewett, Mayfield, Navarro, Tarrant and Wright—16.

**Noes**—Messrs Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Henderson, Hicks, Howard, Holland, Hunter, Lattimer of L., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mc'Gowan, M'Neil, Parker, Rains, Runnels, Scott, Smyth, Standeter, Ochiltree, White and Young—29.

So the motion was lost.

On motion of Mr. Lewis, the report of the committee on education was taken up.

Mr. Mayfield offered the following amendment as an addition to the 3d section:

And all lands which may hereafter be declared vacant, either by the courts of this state, the federal or supreme courts of the United States, lying either within the limits of any colonization contracts as specified in the same, after applying the proceeds thereof to the payment of the debts and liabilities for money or land of the Republic of Texas as the legislature may direct, the one-half the residue thereof shall be applied to the support and maintenance of free common schools, reserving at all times to the contractor his just quantum of premium lands, and to the actual settler the full quantity to which he may be justly entitled.

Mr. Evans moved to strike out that portion applying the proceeds to the payment of the debts and liabilities of the Republic of Texas.

Which motion was lost.

Mr. Young moved to strike out that portion reserving to the contractors their premium lands.

Lost.

The ayes and noes were then called on the adoption of Mr. Mayfield's amendment, and stood thus:

Ayes—Messrs. Armstrong of R., Baylor, Caldwell, Cazneau, Clark, Evans, Everts, Horton, Hunter, Jewett, Lewis, Mayfield, McGowan, Parrott and White—15.

Noes—Messrs. President, Bache, Bagby, Brashear, Burroughs, Cunningham, Cuney, Gage, Hicks, Hogg, Irion, Latimer of L., Latimer of R., Love, Lumpkin, Lipscomb, McNeil, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Ochiltree, Wright and Young—27.

So the amendment was rejected.

Mr. Young moved the previous question.

Which motion prevailed.

The main question being the adoption of the 3d section of the report of the committee on education was carried, and the section adopted.

On motion, the report was ordered to be engrossed.

Leave of absence was granted to Messrs. Everts and Howard for the remainder of the session.

On motion of Mr. Young, the schedule was taken up.

Mr. Ochiltree moved to fill the blank in the 1st section with the words "time of the adoption of this constitution by the Congress of the United States."

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

Monday morning, August 25, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The special committee (W. B. Ochiltree chairman) appointed to supervise and make grammatical and other corrections to the different articles of the constitution; reported corrections upon the General Provisions, Education, Slaves and Impeachment.

Mr. Standifer offered the following additional section to the General Provisions, to come in between 23d and 24th sections:

The salaries of the Governor and the Judges of the supreme and district courts are hereby fixed at the minimum established in the constitution, and shall not be increased for ten years.

On motion, of Mr. Hogg, the rule was suspended and the additional section adopted as one of the sections of the General Provisions.

On motion of Mr. Horton, the chairman on printing was authorized to employ George Fisher for the purpose of translating into Spanish language the constitution of the state, at two dollars per page.

On motion of Mr. Young, the report of the revising committee was taken up, and the various corrections to the General Provisions and Education, were adopted by the convention.

On motion of Mr. Anderson, the General Provisions were read section by section.

Mr. Cunningham moved to strike out the 19th section, providing that "all property, both real and personal, of the wife, owned, or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property," &c.

Mr. Latimer, of Lamar, seconded the motion to strike out, expressing in forcible language his objections to the section.

The convention refused to strike out