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Mr. Runnels moved to amend the 8th section, so as to provide for the election of Representatives to the United States' Congress as well as Senators.

Which amendment was adopted.

Mr. Rusk moved to adjourn until to-morrow morning, 8 o'clock.
Lost.

Mr. Mayfield gave notice that he would take this opportunity to give his views in full upon the merits of the Ordinance; and

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

Tuesday morning, Aug. 26, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Anderson gave written notice that he would move a re-consideration of the vote adopting a section of the General Provisions, providing for amending the Constitution.

Mr. Caldwell, from a special committee, made the following report:

Committee Room, Aug. 26, 1845.

To the Honorable THOS. J. RUSK,

President of the Convention:

The committee, to whom was referred the case of Post Captain E. W. Moore, for want of time having been unable to examine into the subject matter referred to them, they therefore express no opinion upon the merits of the case, but recommend the passage of the following resolution:

JOHN CALDWELL, Chairman.

Resolved. By the Delegates of the people in Convention assembled, That in closing their labors as the representatives of the people, they are constrained by a sense of duty to their country and their gallant fellow citizen E. W. Moore to recommend him to the favorable consideration of the American government, and that he may be retained and provided for in the naval service thereof.

On motion, the rule was suspended.

Mr. Van Zandt offered the following amendment to the resolution :

Strike out after the word "they" in the 3d line, down to the word "that" in 7th line, and insert "respectfully recommend to the favorable consideration of the American government, their gallant fellow citizen Post Captain E. W. Moore, and request that he."

Which amendment was adopted.

The resolution as amended was then adopted, and reads as follows :

Resolved, By the Delegates of the people in Convention assembled, That in closing their labors as the representatives of the people, they respectfully recommend to the favorable consideration of the American government, their gallant fellow citizen Post Captain E. W. Moore, and request that he may be retained and provided for in the naval service thereof."

Mr. Ochikree offered the following resolution :

Resolved, That the officers of the Convention be entitled to receive the same pay as allowed the officers of the House of Representatives of the 9th Congress.

Which was laid on the table one day for consideration.

Mr. Bache offered the following resolution :

Resolved, That the President of the Convention be authorized to draw his warrant upon the Secretary of the Treasury of the Republic of Texas, for _____ dollars, in favor of J. D. McLeod, as compensation for extra services as Post Master of Austin, during the session of the Convention.

Which was laid on the table one day for consideration.

Mr. Henderson offered the following resolution :

Be it resolved, That the Secretary of this Convention be instructed to draw from the Treasurer the pay allowed by the Convention to J. W. Oliver, of Sabine county, and that he be further instructed to pay over the same to the Hon. J. M. Burroughs, for the use of the said Oliver.

Which was laid on the table one day for consideration.

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

ORDERS OF THE DAY.

The additional section, as offered by Mr. Henderson to the 8th section of the Schedule, being first in order, was taken up and adopted.

Section 9th adopted.

In section 10th, Mr Henderson moved to amend, by striking out the words "taking effect of this Constitution," and insert "from the change of the government."

Which was carried.

In same section, on motion of Mr. Henderson, the words "though contrary to this Constitution," were stricken out.

The section was then read as amended.

Mr. Caldwell said: That strikes me as very strange. It seems to hang with tenacity to the President and Foreign Ministers, and to contemplate that they shall retain their offices until the organization of the state government. Suppose that our Constitution is adopted on the first Monday in December, how can the President possibly exercise his functions as the head of a separate and distinct government, and what would Foreign Ministers be doing? How can we have a President drawing his salary, a Secretary of State and a Secretary of the Treasury, and Foreign Ministers, being at the same time a part of the United States? I cannot conceive of such a state of things. In my opinion, this will have to be altered, because when our Constitution is accepted by the Congress of the United States, these functionaries must go out of office. This is a dilemma, from which I cannot see how we are to extricate ourselves.

Mr. Henderson said: I do not think there is any dilemma here. According to the doctrine which I advocate and believe to be the true one, we are a separate government until organized under this Constitution, after it is accepted by the United States' government. So far as regards Foreign Ministers, I hold this to be law: that neither the Legislature of Texas nor this Convention, until the Constitution is made and in force, can take away from the President, the power to send Foreign Ministers given him by the old Constitution. I am not so very suspicious of the President; however he may differ from me in the matter of annexation, I pretend not to know his opinions. I do not suppose that he would now send Ministers to England or France. So far as regards the United States, I think it necessary to have one there until our Constitution is accepted; and then, no doubt, the President will order him home.

Mr. Caldwell said: The gentleman from San Augustine has not reached the question at all. According to the reading of the resolution, we are absolutely and in fact a separate, independent Republic, the President having all the functions and powers that he now has after the acceptance of our Constitution. These officers are lopped off and of necessity cease to exercise their functions under the present Constitution the moment that the State adopts our State Constitution. As for suspi-

cion, the President may be the strongest annexation man in the Republic. That does not remove the objection. I am speaking of the difficulty this resolution, if adopted, will place us in, at the time of and after our acceptance by the United States' Congress. It proposes that these officers shall go on and exercise their functions under the old Constitution, and be acting at the same time in subordination to the Constitution of the United States.

Mr. Henderson said: The expression is, that this Constitution shall go into full force and effect "from and after the organization of the state government under the new Constitution," not from the acceptance by the Congress of the United States. The whole harmonizes. It presents no difficulties to my own mind.

Mr. Cunningham said: It seems to me that there is something uncertain about the date when this Constitution is to take effect. I think it would be better to say "from and after the organization of the first State Legislature." The different branches of the government will not all be organized upon the same day.

Mr. Hemphill said: Perhaps the amendment of the gentleman from Victoria would render more certain the period of the commencement of the State government, and should therefore be adopted.

Allow me while on the floor to reply with brevity to some of the arguments of gentlemen in opposition to the additional sections proposed.

It has been contended that we could not be admitted into the Union until the State government was in complete operation, and that after the ratification of this Constitution by the people, the Republic could not, without violating the terms and spirit of the overture for annexation, exercise the powers and maintain the jurisdiction of a separate, distinct and independent sovereignty. The argument in my opinion is founded upon a want of due consideration as well of the circumstances of our situation, as of the facts connected with the establishment and operation of the Constitution of the United States, and of various States; and also upon a misconception of the true character of the constitutional compact and the rights of the several parties to the Union.

Our condition is in some respects materially different from that of the original thirteen States previous to the formation of the Constitution of the United States. Much more is it in contrast with the situation of a Territory previous to its admission as a State. A Territory is but a corporation, a creature of the government of the United States, dependent upon it for existence, supported out of its treasury, governed by its will, and whose officers are appointed, and whose laws may be revised by the authorities of the Federal government.

Acquires powers and rights, not before possessed. We on the contrary do not receive, but relinquish several of the powers of sovereignty. During the whole period of the transmutation of a territory and its elevation to the dignity and powers of a sovereign State, the laws and jurisdiction of the United States are in active operation within the limits of the said territory. There is no hiatus in the powers of government. All the laws necessary for the preservation of order, the maintenance of tranquility, the support of the foreign as well as domestic relations of the community, the continuance of established institutions, and the enjoyment of all rights, civil, political, social and domestic are enforced, either by the territorial government or by that of the Union. Far different is our situation. The jurisdiction and laws of the United States cannot be extended over this country without additional legislation by the Congress of the U. States. All the mass of powers belonging to the government of the United States must be enforced by the government of the Republic, or not at all. If we cannot exert the faculties of an independent State, the Post Office establishment must cease. No Tariff could be collected. There is no officer or authority to collect that of the United States, and if we were a Territory, or even a State, we would be stripped of the mighty power of indirect taxation. All the exclusive rights and powers of the general government, the protection which it owes the citizen, and which are all now exerted and afforded by our present government would be in abeyance if the argument in favor of the immediate formation of a State government should prevail. The crimes punishable by the government of the United States, are not cognizable as offences against a State, and might be perpetrated here without check from any lawful authority. All the powers of sovereignty may be required and should be capable of exercise to promote the welfare of the community, and secure the safety of the State: and I cannot believe that we would be justified in overturning the present government, or stripping it of its powers and erecting one, which by its very Constitution must be incapable of enforcing several of the rights of sovereignty, and of accomplishing some of the most necessary and beneficial objects of government.

The argument that the Constitution cannot be ratified and established without going into immediate operation, is altogether untenable. Many Constitutions have been framed on this continent within the last seventy years;—and they have generally, if not invariably been ratified and established some time previous to their active operative effect.

The seventh article of the Constitution of the United States provides that the ratification of the Conventions of nine States shall be sufficient for the establishment of that Constitution between the States so ratifying the same. Now although the Constitution of the U. States was established on the ratification of nine States, we know from history that it had no active force until several months after that event. The ratifica-

tion of the State of New Hampshire was the ninth. This was on June 21st, 1788; and was transmitted to the Congress assembled under the Articles of Confederation. This body debated for two months before they adopted an act for putting the Constitution into operation. By that act provision was made for the election of a President; and the 4th of March, 1789, was appointed as the time for commencing proceedings under the said Constitution. Thus although this Constitution was established on the 21st June, 1788, yet it did not go into operation until the 4th March, 1789. The government under the old Articles of Confederation was during this interval still in force. During that period the State of Virginia passed a law impairing the obligation of a contract; but the Supreme Court of the U. States decided that the law was not affected by the Constitution, because that instrument, though established on the ratification of the ninth State, had no effect until the operations of government under the same had actually commenced. There is no incompatibility between the establishment of a new Constitution to commence at a future day, and the continuance of the old government until that time. There is nothing in the history of Constitutions which would require us hastily to subvert the present government, because a new Constitution has been framed. Let us pursue the example of the United States. After the establishment of their Constitution, but during the continuance and under the direction of the old government of the confederation, a President, Senators and Representatives were chosen, and at the period prescribed for the commencement of the new government, these functionaries were at once prepared to discharge their official functions. Let us in the same manner elect the Governor and the members of the State Legislature, to be ready for the organization of the State government at an early period after the acceptance of our Constitution by the Congress of the United States. We cannot with any propriety, and with a due regard to the preservation of the country from anarchy and confusion, proceed a step further. We are still an independent Republic, and the Union will not be complete until official notice of the acceptance of our Constitution has been received.

So far is it from being true in principle that we cannot be admitted into the Union without the previous organization of a State government, that it was not necessary that even a new Constitution should be framed and adopted. We have consented to do so by our acceptance of the proposed terms of annexation; but the proposal itself originated in misapprehension, and such a condition is not of necessity a preliminary essential to the incorporation of a State already sovereign and independent into the Federal Union.

Under the articles of confederation, the States possessed more enlarged powers than under the new Constitution. For instance they had the exclusive power of raising and collecting a revenue by "taxes, laws." Again, the laws of the confederacy did not generally operate directly

upon the individual citizen, but were powerless unless enforced by the States. The adoption of the Constitution of the United States effected a mighty change in both the general and state governments. The Union acquired and the States relinquished several sovereign powers. But no one supposed at that time, or has since maintained that new Constitutions should be formed by the States—that their situation should be adapted to this change in the powers of their governments—and that this too should be done before the Constitution and laws of the United States could be enforced in the territorial limits of the respective States. They already possessed republican forms of government. By assenting to the Constitution of the United States, all portions of the constitutions and laws of the several States repugnant thereto became in future null and inoperative.

In this respect, our situation is analagous to that of the old States. We possess all the powers of a separate and independent sovereignty, a portion of which we are now ceding to the government of the Union. We already have, as had also the old States, a written Constitution. Our form of government is, as was theirs, republican in form, substance and character. The only preliminary, then, indispensable to our admission into the Union, is that which was required of the original states, viz. our assent to the Constitution of the United States. This once given unaccompanied with any reservations, sweeps away all powers of government, and all provisions of our Constitution and laws in conflict with the Federal Constitution.

Some of the original States did not change their Constitutions for a long period after the present government of the U. States went into operation. Rhode Island has not to this day even formed a Constitution, but is still governed by the Royal Charter under which the colony was established. North Carolina and Rhode Island were both admitted into the Union several months after the organization of the general government: but the first was not required to change her Constitution, nor the latter her Royal Charter. Assent to the Federal Constitution, and nothing more, was necessary.

I might go on to illustrate our situation by comparison with that of North Carolina and Rhode Island previous to their consent and ratification of the Constitution of the U. States. They continued to collect their State Tariffs, and the first revenue law of the United States authorized duties to be collected of certain articles imported from North Carolina and Rhode Island into the United States. But I forbear. The patience of this body has been severely tested, and I feel no inclination to press it further. Should the sections as proposed by the gentleman from San Augustine be adopted, the situation of the country would then be well understood by all. The old laws in all their force—the old government with all its attributes would continue until the United States were prepared to exercise their portion of the powers of government,

and we were ready to place ourselves under the control of new laws, Constitution and authorities. There would be but one change of government. All persons, even those of the most humble intellect, could understand the powers as well of the old as of the new governments, and the time and extent of the change which would be effected. Should, however, a provisional government be adopted, its powers would be ill-defined, and might be resisted. The rights, obligations and duties of the citizens and of the government would be uncertain, liable to great misapprehension, and might involve us in all the worst consequences of confusion, discord and anarchy.

Mr. *Mayfield* said: All the principles stated by the gentleman from Washington may be correct: but it does not follow that there is no other mode than the one he advocates, when by we can, without infringing upon State rights, or the principles of international law, obtain admission into the American Union. There is a marked difference between the position of the State of North Carolina and others mentioned, and ours under the plan proposed by the majority upon this floor. Their governments, sir, were organized upon an economical, plain, republican and cheap system. They had not the enormous taxation which this plan supposes. This scheme proposes to continue a system which has borne down the people for years; it proposes to keep up a host of extravagant officers required neither by propriety and necessity. Your President is to have his salary of 5,000 dollars; your Secretaries, your Attorney General, your Judges, your Custom House Collectors, your revenue officers of every description are to be daily and monthly drawing from the treasury their enormous salaries; and this is to continue for six, eight, and perhaps for twelve months; yis, sir, if the President choose, under the terms of that proposition, until the expiration of his term of office. Foreign ministers are still to be supported, with salaries which will enable them to revel in the luxuries of foreign equities, and interchange civilities with noblemen and great men. This is the difference in the operation of the two plans. By our own system we propose immediately to organize the State government, and thus to reduce the number of officers, and to substitute a cheap government in the place of an expensive one. We propose to reduce the expenditures of the government from 150 to 200,000 dollars per annum to support a host of mercenaries and vampyres in office, down to about 50,000 dollars per annum. This is a grand difference, and it is the duty of this Convention to look to it. If a plan can be devised by which, without violence to any great principles, or to the spirit of the annexation resolutions, we can provide for a more speedy admission into the Union, and relieve the people of the enormous expenses attendant upon the present system, by all means let us adopt it. Are we not called upon to devise such a plan? And are gentlemen prepared to say that such a plan cannot be formed? I think not, sir. I call upon them to take a little

time to reflect upon this subject; and I trust that such a mode will be adopted as will secure all these objects.

On motion of Mr. Hemphill, the words "or until the first day of the meeting of the Legislature," were also added.

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

The main question was the adoption of the section as amended.

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

Yeas—Messrs. Anderson, Armstrong of R. Baylor, Bigby, Bra-shear, Clark, Cunningham, Cuney, Darrill, Evans, Forbes, Hemphill, Henderson, Hicks, Horton, Holland, Hunter, Ligon, Jewett, Jones, Latimer of L., Lattimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Scott, Smyth, Standefer, Stewart, Tarrant, Ochiltree, Van Zandt, White and Young—40.

Noes—Messrs. President, Caldwell, Cazneau, Gage, Hogg, Mayfield and Runnels—7.

So the section as amended was adopted.

Mr. Anderson offered the following as an additional section, to come in before the 11th section.

In case of any inability on the part of the President of the Republic of Texas to act as heretofore required, it shall be the duty of the Secretary of State of the Republic of Texas, and in case of disability on the part of the Secretary of State, then it shall be the duty of the Attorney General of the Republic of Texas to perform the duties assigned to the President.

Which was adopted.

Mr. Mayfield offered the following as an additional section, to come in before the last section:

"No impost duties or tariff shall be collected, by the authorities of Texas, upon any goods, wares or merchandise imported into Texas from and after the final action of the United States Congress on this Constitution."

The yeas and noes were called for.

Mr. Runnels said: As I have not been very troublesome to the Convention, I will briefly state my reason for the vote. I shall give. The object of the section appears to be to relieve the country from the bur-

then of the revenue system from and after the final action of the Congress of the United States. If this end could be accomplished by it, I would certainly vote for it. Because I think that system has operated, and is operating heavily upon my own section of the country. But the interval will be so short between that final action and the period at which the revenue laws of the United States will be enforced, that no class will be benefited, but the merchants alone. They will introduce their goods into the country, and retain them until the duties of the U. States are imposed, which will be much higher, and they will then sell them to the people of the country at the same or higher prices. Now, entertaining the opinion that this additional section will not operate as a relief to the people of the country, but only as a benefit to the merchant, I shall vote against it.

The ayes and noes were called, and stood as follows;

Ayes—Messrs. Anderson, Brown, Caldwell, Cazneau, Forbes, Horton, Latimer of L., Love, Lusk, Mayfield and Navarro—10.

Noes—Messrs. President, Armstrong of R., Bagby, Baylor, Bache, Brashear, Clark, Cunningham, Cuney, Darnell, Evans, Hemphill, Henderson, Hicks, Hogg, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—46.

So the additional section was rejected.

Section 14th was then read.

Mr. Latimer of L. moved the previous question, which was carried.

The main question being the adoption of the section,

The ayes and noes were called and resulted as follows:

Ayes—Messrs. Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Clark, Cunningham, Cuney, Darnell, Evans, Forbes, Hemphill, Henderson, Hicks, Horton, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—43.

Noes—Messrs. President, Anderson, Caldwell, Cazneau, Clegg, Hogg, Mayfield and Runnels—8.

So the section was adopted.

On motion of Mr. Hemphill, the 5th section of the printed schedule was stricken out.

Mr. Caldwell offered the following as an additional section :

"Be it further ordained, That at the same time, and places above specified for holding elections for the adoption or rejection of this Constitution, polls shall also be opened under the superintendence of the same managers, judges and other officers, for the election of a Governor and Lieutenant-Governor, for the State of Texas, and for Senators and Representatives to the Legislature of said State, in accordance with the apportionment of representation as established by said Constitution."

Be it further ordained, That if the people of Texas elect to accept the aforesaid proposition of annexation, and approve and adopt the Constitution for the State submitted to them, then the first Legislature of said State shall convene at the seat of government established by this Constitution, on the 21 Monday in November next, and proceed immediately to organize under said Constitution, and that after they shall have organized, the Speaker of the House of Representatives shall, in the presence of both branches thereof, open the returns of said election, count and compare the votes, and declare the names of the persons who shall have been chosen as Governor and Lieut. Governor, which said persons shall forthwith take the oath of office prescribed by the Constitution, and enter upon the discharge of their respective duties."

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

Ayes—Messrs Caldwell, Cazneau, Hogg, Mayfield and Runnels—5.

Noes—Messrs. President, Armstrong of R., Anderson, Baylor, Bagby, Bache, Brashear, Brown, Clark, Cunningham, Cuney, Darnell, Evans, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of L, Latimer of R, R, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—46.

So the additional section was rejected;

Mr. Young moved the previous question :

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

Ayes—Messrs. Armstrong of R, Bagby, Bache, Brashear, Burroughs, Clark, Cuney, Forbes, Gage, Hemphill, Henderson, Hicks, Holland, Irion, Jewett, Latimer of L, Latimer of R, R, Lewis, Lumpkin, Lipscomb, McGowan, McNeil, Navarro, Rains, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—31.

Noes—Messrs. President, Anderson, Baylor, Brown, Caldwell, Cazneau, Cunningham, Darnell, Gage, Hogg, Horton, Stewart, Hun-

ter, Jones, Love, Lusk, Mayfield, Parker, Runnels, Scott, and White,
—21.

So the previous question was ordered.

The main question being the engrossment of the schedule;

The ayes and noes were called, and stood as follows:

Ayes—Messrs Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Clark, Cunningham, Coney, Darnell, Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, McNeil, Navarro, Parker, Ruins, Scott, Smyth, Standefor, Tarrant, Ochiltree, VanZandt, Wright and Young—39.

Noes—Messrs President, Anderson, Caldwell, Cazneau, Gage, Hogg, Horton, Hunter, Love, Lusk, Mayfield, Runnels, and White—13.

So the schedule was ordered to be engrossed.

Mr. Darnell moved a reconsideration of the vote just taken, ordering the engrossment of the schedule.

Mr. Darnell moved to lay his motion on the table.

Lost.

The question was taken on the motion of Mr. Darnell to reconsider.

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

Ayes—Messrs President, Anderson, Baylor, Bache, Brown, Caldwell, Cazneau, Cunningham, Darnell, Gage, Hogg, Horton, Love, Mayfield, Runnels and White—16.

Noes—Messrs Armstrong of R., Bache, Brashear, Burroughs, Coney, Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Ruins, Scott, Smyth, Standefor, Tarrant, Ochiltree, Van Zandt, Wright and Young—36.

So the Convention refused to consider.

On motion of Mr. Van Zandt, the schedule was referred to the reporting committee.

On motion of Mr. Hemphill, the Convention took up the report of the committee on the judiciary, on the subject of fraudulent land claims.

Mr. Hemphill offered the following as a substitute to the 2d section of the original report:

"The District Courts shall be opened until the first day of July, 1847, for the establishment of certificates for head-rights not recommended by the Commissioners appointed under the "act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants:" and the parties suing shall produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application for the said certificates; and all certificates above referred to, not established or sued upon before the period limited, shall be barred; and the said certificate and all locations and surveys thereon, shall be forever null and void; and all re-locations made on such surveys, shall not be disturbed until the certificates are established as above directed."

Which was adopted as a substitute.

Mr. Evans moved to lay the report on the table. Lost.

Mr. Evans then offered the following as an addition to the sections offered by the judiciary committee, on the subject of fraudulent land claims, &c.

"All grants, warrants, concessions, orders of survey, or claims to land of every degree and kind emanating or purporting to emanate from the crown or authorities of Spain, or from the authorities of Mexico; and all surveys made thereon, which were located within the twenty leagues of the border line between Texas and the United States, were null and void.

All grants, warrants, concessions, orders of survey, or claims to land of every degree and kind, emanating or purporting to emanate from Mexico, or any of her authorities after the first day of January, 1832, and prior to the 2d day of March, 1836; and all surveys or locations made thereon, are null and void.

All grants, warrants, concessions, patents, certificates, orders of survey, or other evidence of claim or title to land, owned, belonging to or claimed by any person or persons, other than an actual and *bona fide* inhabitant of the Republic of Texas, at the day of the adoption of this Constitution by the people of Texas, saving the rights of persons to titles which emanated to them directly from the government of the Republic of Texas, and the rights of widows whose husband were, or orphan children, whose father was a citizen of the Republic of Texas at the day of his death.

In all suits by or against any holder or owner of any grant, warrant, patent, concession, order of survey, or title of any degree or kind, or by or against any assignee or representative, either claimant or defendant in his petition or answer, or other pleading verified by affidavit, may put in issue the validity of the opposing title, and may enjoin the other party to prove the authority of the officer or person issuing the claim—that

the same was issued in good faith; that it was issued in conformity with law; that all the conditions were performed, and that the location and survey were legally made."

On motion of Mr. Ochiltree, Mr. Rusk was added to the revising committee.

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

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Young, the report of the committee on education was taken up, read a third time and passed.

On motion of Mr. Young, the report of the committee on the judiciary, on the subject of fraudulent land claims, &c., was taken up.

Mr. Jones offered the following as an amendment to the sections as offered by Mr. Evans:

"All grants to land heretofore located within the Republic of Texas or which shall be located previous to the adoption of this Constitution by the government of the United States, shall be null."

Which was adopted as amended.

Mr. Navarro offered the following as a substitute:

"That there may be no further difficulties in the adjudication of the validity of the titles to the grants to land, it is hereby declared that every settler who may have located his claim upon any grants heretofore made by the former governments of Spain and Mexico, shall be bound within the term of two years from the date of the adoption of this Constitution, to enclose the same with a stone wall on all sides, of eight yards in height at least. This obligation shall devolve upon his heirs and assigns, on pain in case of not complying with it, or in case of neglect to keep the said wall in constant repair, so that there never shall be a breach in it to the extent of one yard, then, and in these cases, he shall forfeit all his claim to the said land; and the grant, title or claim to the said land shall be null and void, and the said land shall be declared vacant and subject to a new location, and subject to the same conditions and penalties."

Mr. Van Zandt moved the previous question, which was carried.

The main question being the engrossment of the report of the judiciary committee,

The yeas and noes were called, and are as follows:

Yeas—Messrs. President, Anderson, Armstrong of R., Baylor, Bagby, Brown, Burroughs, Caldwell, Caspeau, Clark, Darpell, Evans, Hemphill, Henderson, Hicks, Hogg, Horton, Stewart, Holland, Hun-

ter, Jewett, Jones, Latimer of L., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McNeill, Miller, Navarro, Parkér, Rains, Runnels, Scott, Standefer, Tarrant, Van Zandt, White, Wright and Young—41.

Noes—Messrs. Bache, Brashear, Cuney, Forbes, Gage, Irion and McGowan—7.

So the section was ordered to be engrossed.

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

Mr. Henderson offered the following resolution :

Resolved, That the Reporter receive the sum of _____ dollars for his services during the session ; and further, that he receive the sum of _____ dollars for the completion of his reports, to be paid upon the certificate of the Secretary of the Convention, when the reports may be delivered to him.

Laid on the table one day for consideration.

Mr. Horton offered the following resolution :

Resolved, That the Secretary of the Convention be required to procure a well bound book, and record in the same the Journals of the Convention, together with the Constitution and the several Ordinances that may be adopted by the Convention ; and that for his services while employed in recording, superintending the printing, and distribution of the journals, he shall be entitled to and receive the same pay per month as a chief clerk of a department, to be paid out of the contingent expenses of the Convention.

Which was laid on the table one day for consideration.

Mr. Hemphill moved to take up the report of the judiciary committee, upon the subject of the creation of new states. Lost.

Mr. Ochiltree, from the revising committee, to whom was referred the Schedule, reported various grammatical amendments and changes of phraseology, which were adopted. He also reported, that a majority of the committee had instructed him to recommend the following, to come in at the end of the 10th section :

“ Provided, no act shall be performed under the provisions of this section, which would be inconsistent with the obligations which Texas has assumed by the acceptance of the terms of annexation, as contained in the Joint Resolutions of the United States Congress, approved 1st March, 1845 ; and also the following additional section, to be sec. 18th :

“ After the adoption of this Constitution by the people of Texas, the President shall have no power to enter into any treaty, compact or alliance with any power other than the United States.”

The revising committee also recommend that the word "shall" be stricken out, and the word "may" inserted in the 4th section, so as to read "the Legislaturè *may* provide by law."

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

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

The ayes and noes were then taken on the amendment of the committee, to insert the word "may" in lieu of the word "shall," and stood thus:

Ayes—Messrs. President, Baylor, Backe, Brashear, Brown, Caldwell, Cazneau, Henderson, Hicks, Horton, Stewart, Hunter, Irion, Jones, Love, Lusk, Lipscomb, Mayfield, McGowan, Miller, Navarro, Scott, Tarrant and Ochiltree—24.

Noes—Messrs. Armstrong of R., Bagby, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Forbes, Gage, Hemphill, Hogg, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, McNeil, Parker, Rains, Runnels, Smyth, Standefer, Van Zandt, White, Wright and Young—27.

So the amendment was lost.

The ayes and noes being called on the amendment suggested by the revising committee, to be inserted at the end of the 10th section, stood as follows:

Ayes—Messrs. President, Baylor, Brown, Caldwell, Cazneau, Forbes, Gage, Hogg, Horton, Stewart, Hunter, Irion, Jones, Love, Lipscomb, Mayfield, Parker, Runnels, Scott, Smyth, Standefer, White and Wright—23.

Noes—Messrs. Armstrong of R., Backe, Bagby, Brashear, Burroughs, Clark, Cuney, Darnell, Evans, Hemphill, Henderson, Hicks, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, McNeil, Miller, Navarro, Rains, Tarrant, Ochiltree, Van Zandt, and Young—27.

So the amendment was rejected.

The ayes and noes being called on the second amendment suggested by the same committee, to prevent the President from entering into any treaty, compact, &c., after the adoption of the Constitution by the people, stood as follows:

Ayes—Messrs. President, Armstrong of R., Baylor, Brown, Bagby, Caldwell, Cazneau, Cunningham, Darnell, Forbes, Gage, Hemphill, Hogg, Horton, Stewart, Hunter, Irion, Jones, Latimer of R. R., Love, Lipscomb, Mayfield, Miller, Navarro, Parker, Runnels, Scott, Smyth, Standefer, Tarrant, White and Wright—33.

Noes—Messrs. Bache, Brashear, Burroughs, Clark, Cuney, Evans, Henderson, Hicks, Latimer of L., Lewis, Lumpkin Lusk, McGowan, McNeil, Rains, Ochiltree, Van Zandt and Young—18.

Two-thirds not having voted for the amendment, the chair decided that a majority could adopt it, from which decision Mr. Henderson appealed.

Mr. Mayfield moved a call of the Convention. Lost.

The ayes and noes being called on sustaining the chair, stood as follows:

Ayes—Messrs. Baylor, Caldwell, Cazneau, Gage, Hogg, Hunter, Navarro, Runnels and White—9.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Cuney, Evans, Forbes, Hemphill, Henderson, Hicks, Horton, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Miller, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—39.

So the appeal was sustained, and the amendment declared to be rejected.

Mr. Horton moved a re-consideration of the vote engrossing the Schedule.

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

Ayes—Messrs. President, Baylor, Brown, Caldwell, Cazneau, Cunningham, Forbes, Gage, Hogg, Horton, Hunter, Love, Mayfield, Navarro, Runnels, Scott, Standefer and White—18.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cuney, Evans, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Rains, Smyth, Tarrant, Ochiltree, Van Zandt, Wright and Young,—33.

Lost.

Mr. Lewis moved to suspend the rule, so as to place the Schedule on its 3d and final reading.

Mr. Mayfield moved a call of the Convention. Lost.

Mr. Mayfield moved to adjourn until half past 8 o'clock, to-morrow. Lost.

Mr. Mayfield moved a call of the Convention. Lost.

Mr. Mayfield moved to adjourn until 8 o'clock, to-morrow:

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

Ayes—Messrs. President, Brown, Caldwell, Cazneau, Cunningham, Gage, Hogg, Irion, Mayfield, Navarro, Runnels and White—12.

Noes—Messrs. Armstrong of R., Baylor, Bache, Bagby, Brashear, Burroughs, Clark, Cuney, Evans, Forbes, Hemphill, Henderson, Hicks, Horton Stewart, Holland, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—37.

Lost.

The ayes and noes were then called on the suspension of the rule, and stood as follows :

Ayes—Messrs. Armstrong of R. Baylor, Bagby, Brashear, Burroughs, Clark, Cuney, Evans, Hemphill, Henderson, Hicks, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Miller, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—37.

Noes—Messrs. Bache, Brown, Caldwell, Cazneau, Cunningham, Forbes, Gage, Hogg, Horton, Love, Navarro, Runnels, and White—14.

So the rule was suspended.

Mr. Henderson moved to re-consider the vote just taken.

Mr. Hunter moved to adjourn until 8 o'clock, to-morrow morning.

Lost.

The question was then taken on Mr. Henderson's motion to re-consider and lost.

Mr. Mayfield moved to re-consider the vote just taken.

On motion of Mr. Latimer of R. R., the motion to re-consider was laid on the table.

Mr. Rusk offered the following as a substitute for the additional sections offered by Mr. Henderson to the Schedule :

In order to provide for submitting the question of the annexation of Texas to the United States, and the adoption of this Constitution to the people of Texas, and to provide for changing the present separate independent republican government of Texas, into a state government of the American Union : a poll shall be opened at the several precincts in the new Republic of Texas, on the first Monday in October next, at which time and places the people of Texas shall vote *viva voce* for annexation,

or no annexation. And upon the same day, and at the same places, a poll shall also be opened, wherein the people of Texas shall vote for the ratification or rejection of the Constitution of the State of Texas, *viva voce*, ratification or no ratification.

Upon the first Monday in December next, an election shall be holden by ballot, for a Governor, Lieutenant Governor, and Senators and Representatives to the Legislature of the State of Texas, in accordance with the apportionment made by this Constitution.

The President of the Republic of Texas is respectfully requested to issue his proclamation ordering the said elections, and the several chief justices of the respective counties of the Republic of Texas, or their associates be, and they are hereby required to cause the said elections to be holden on the day, and at the several places designated as above: and should they fail, it shall be competent for the voters at any precinct to elect the manager and conduct said election. The said elections shall be holden as nearly as practicable, according to the rules prescribed by the laws of the now Republic of Texas for conducting elections. Triplicate returns of said election shall be made out, one transmitted to the Secretary of State of the Republic of Texas, one to the Speaker of the House of Representatives of the Legislature of the State of Texas, and one filed in the office of the clerk of the county court.

The first Legislature of the State of Texas, shall convene at the city of Austin, on the first Monday of January next, and proceed to organize under this Constitution; and after they shall have been organized, the Speaker, in the presence of both Houses, shall open the returns, cause the polls to be compared, and declare the election of the Governor and Lieutenant Governor, who shall forthwith be inaugurated, take the oath of office, and enter upon the discharge of the respective duties assigned them under this Constitution.

The said Legislature of the State shall proceed, as soon as they deem it proper, to elect Senators to the Congress of the United States, and to provide for the election of Representatives to the Congress of the United States, and of Texas.

It shall be the duty of the Legislature of the said State of Texas, forthwith after their organization, and they are hereby fully empowered and authorized aforesaid, to adopt the measures necessary thereto, and to cede to the United States all the public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, and armaments, and all other means pertaining to the public defence, belonging to the now Republic of Texas, and to transfer at as early a day as practicable, the Custom Houses, and to place such officers as may be appointed therefor, by the government of the United States, in the receipt of revenue to be after such transfers, derived from impost duties, tonnage

&c., and fully to do and to perform all acts and things necessary to complete our annexation to the government of the United States.

In order that no inconvenience or collision may arise from the contemplated change of government of Texas, the President of the now Republic of Texas, together with all officers civil and military of said Republic, shall continue in the execution of the functions of their several offices, under the laws of said Republic now in force, not inconsistent with the joint resolution for annexation, and in the receipt of all public dues, until the acceptance of our Constitution by the Congress of the United States, and until they be superceded by the officers of the State government, to be hereafter chosen by the government and people of Texas.

So soon as it shall be officially notified to his Excellency, the President of the now Republic of Texas, that the Congress of the United States have accepted the Constitution of the State of Texas, he shall forthwith surrender to the Governor of the State, all the public archives, documents, money, property, and papers belonging to the Republic of Texas.

On the second Monday in November next, or sooner, if the returns shall be made of the votes for and against this Constitution, it shall be the duty of the President of this Republic to transmit to the President of the United States, two copies of this Constitution, duly authenticated, together with the evidence of its adoption, as required by the Joint Resolution of the Congress of the United States, one copy of which shall be transmitted by mail, marked upon the envelope "Constitution of Texas," and one by special messenger.

Mr. Lusk moved to adjourn until 8 o'clock, to-morrow. Lost.

Mr. Hogg moved to adjourn until half past 8 o'clock, to-morrow. Lost.

The yeas and noes being called on the adoption of the substitute offered by Mr. Rusk, stood as follows:

Yeas—Messrs. President, Baylor, Caldwell, Caznead, Gage, Hogg, Horton, Love, Mayfield and Runnels—10

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Coney, Darnell, Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R., R., Lewis, Lampton, Lusk, Lipscomb, McGowan, McNeil, Moore, Miller, Navarro, Parker, Rains, Scott, Staadeler, Tarrant, Ochiltree, Van Zandt, Wood, White, Wright and Young—42.

So the substitute was rejected.

The report of the remaining committee was taken up, and the grammatical corrections concurred in.

Mr. Brown offered the following as an additional section :

“ That the Ordinance passed by the Convention on the 4th of July, assenting to the overtures for the annexation of Texas to the U. States, shall be attached to this Constitution, and form a part of the same.”

Which was adopted.

The Schedule was then read a third time and passed.

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

Wendesday, August 27, 1745.

The Convention met pursuant to adjournment.

Prayer by the Chaplain,

Roll called—quorum present—Journals of the preceding day read and adopted.

Mr. Gage presented the following protest, which was ordered to be spread upon the journals :

To the President of the Convention :

Sir—Availing myself of the right allowed to me by the rules of the Convention, I respectfully ask leave to present my most solemn protest against the adoption of the six last articles of the Schedule of the Constitution, as well as the manner in which they were passed. The subject of changing the present government of Texas to that of a state government, was referred by the Convention to a large and respectable committee, who had reported an ordinance for that purpose, which was not taken up by the Convention, but the present articles introduced, having never been before the Convention, were offered in a body as amendments to the Schedule upon its second reading. Consideration, discussion and amendments were cut off through their passage by the previous question. As soon as the last article was adopted, the previous question, as usual, was called for and carried, and the articles, without being read over, were ordered to be engrossed and referred to a committee, and in four hours reported back to the Convention with two important proposed amendments, one of which restrained the President from making treaties with foreign powers. The amendment was passed by a vote of 33 yeas to 18 noes, upon which a question of order was raised, that it required a majority of two-thirds to pass it. The President of the Convention decided that a majority was sufficient for its adoption, from which decision an appeal was taken to the House, who decided that a vote of two thirds, was required to pass the amendment; thus by indirect measures defeating the express will of a majority, and leaving