

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Journals of the Convention, assembled at the city of Austin on the Fourth of July, 1845, for the purpose of framing a constitution for the State of Texas. Austin: Miner & Cruger, printers to the Convention, 1845.*

Content downloaded from

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

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

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

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

MONDAY, MORNING, August 4, 1845.

The Convention met pursuant to adjournment—prayer by the Chaplain.

Present—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, and Young.

Messrs. Mayfield, and Wright were absent, in consequence of sickness.

The journal of Saturday was read and adopted.

Mr. Gage, in behalf of a special committee, made the following report:

COMMITTEE ROOM, Aug. 4, 1845.

Hon. THOS. J. RUSK,

President of the Convention:

Your select committee, to whom was referred the 7th section of the General Provisions of the Constitution, have had the same under consideration, and have instructed me to report the following amendments, and recommend their adoption:

In the first line, strike out the words "at large," and strike out the entire section after the word "law," in the 3d line.

D. GAGE, Chairman.

Which was laid on the table, to come up among the orders of the day.

Mr. Hemphill offered the following resolution:

Resolved, That the Commissioner of the General Land-Office be requested to report to this Convention, the amount of Land embraced in the certificates for head-rights, issued by the various boards of land-commissioners of this Republic; the amount of land necessary to satisfy certificates reported as genuine and legal; also, the amount of land called for, by certificates not recommended as genuine: the amount of land necessary to satisfy scrip, military warrants, and other inchoate titles issued by the Government of the Republic; and the quantity of the public do-

main which will remain, after the claims already issued are surveyed.

On motion of Mr. Van Zandt, the rule requiring the resolution to lay on the table one day, for consideration, was suspended, and the resolution was adopted.

Mr. Evans offered the following resolution :

Resolved, That a committee of five be appointed, whose duty it shall be, to enquire into and report to the Convention, the condition of the land system of Texas; the amount of unappropriated domain; the amount of appropriated domain; the various kinds of land titles; the various kinds of land claims, located and unlocated; the probable amount of forfeited lands; the probable amount of claims owned by foreigners.

Which, on motion of Mr. Van Zandt, was laid on the table for the present.

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

ORDERS OF THE DAY.

Mr. Ochiltree moved that the Convention resolve itself into a committee of the whole, which was lost.

Mr. Mayfield's amendment to the 14th section, providing for the establishment of public schools in each county, was taken up, and rejected.

Mr. Davis moved that the 14th section be adopted.

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

Ayes—Messrs. President Rusk, Armstrong of R., Bagby, Baylor, Brashear, Brown, Cazneau, Cuney, Davis, Evans, Everts, Forbes, Gage, Hogg, Horton, Howard, Holland, Hunter, Irion, Jones, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Cochiltree and Van Zandt—42.

Noes—Messrs. Anderson, Armstrong of J., Burroughs, Caldwell, Clark, Cunningham, Hemphill, Henderson, Hicks, Jewett, Latimer of L., Latimer of R. R., White and Young—14.

So the section was adopted.

Mr. Howard offered the following amendment to the 15th section :

Add to the same, the following: "when the parties shall select that method of trial."

Which was adopted; and the section, as amended, was adopted.

Mr. Forbes offered the following, to come in between the 15th and 16th sections, as an additional section :

“The Legislature shall pass no law, altering or taking away the legal remedy for the collection of debts, which existed at the time of the contraction of the debt: *provided*, such restriction shall be construed to extend only to laws regulating judgments, executions, mortgages, and deeds of trust.”

Which was rejected.

Mr. Anderson offered the following, as an additional section, to come in between the 15th and 16th sections :

“Within five years after the adoption of this Constitution, the laws, civil and criminal, shall be revised, digested, arranged, and published, in such manner as the Legislature shall direct; and a like revision, digest, and publication, shall be made every ten years thereafter.”

Which was adopted by the Convention.

Sections 16th and 17th were adopted.

Mr. Brown offered the following additional section, to come in between the 17th and 18th sections:

“The legal effects of all marriages now or heretofore subsisting, shall, for the future, be held and taken to be the same as though such marriages had been good and valid from the beginning: *provided*, that nothing herein contained shall work any revocation of vested rights.”

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

On motion of Mr. Van Zandt, the 18th section was referred to the committee on the Judiciary.

In the 19th section, Mr. Van Zandt moved to strike out the words “families of,” and insert “mothers and children under ten years of age.” Which motion was lost.

Mr. Burroughs moved to strike out the section.

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

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Rains, Runnels, Scott, Ochiltree, Van Zandt, White and Young—43.

Noes—Messrs. Davis, Evans, Howard, Hunter, Jones, Love, Navarro, Parker, Power, Smyth, Standefer and Tarrant—12.

So the section was stricken out.

Mr. Hogg offered three additional sections, to come in after the 18th section, as follows :

“SLAVES.

“The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners; nor without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants to this State, from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery, by the laws of this State: *provided*, that such slave be the *bona fide* property of such emigrants: *provided*, also, that laws shall be passed, to inhibit the introduction into this State, of slaves who have committed high crimes in other states and territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them—saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to pass laws, which will oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, and to allow them to rest from labor on the Sabbath or Lord’s day, known as Sunday; to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave, or slaves, taken from such owner, and sold for the benefit of such owner, who will not comply with such law or laws. They shall pass laws to prevent slaves from being brought into this State as merchandize only.

“SEC. 2. In the prosecution of slaves for crimes of a higher grade than *petit larceny*, the General Assembly shall have no power to deprive them of an impartial trial by a petit jury.

“SEC. 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offence had been committed upon a free white person, and on the like proof, except in case of insurrection of such slave.”

On motion of Mr. Evans, the above sections, as offered by Mr. Hogg, were referred to the committee on General Provisions.

In the 20th section, Mr. Henderson moved to amend by striking out all after the word “they,” in the 5th line, and insert the words “are at the time of the adoption of this Constitution by the Congress of the United States.” Which was rejected.

N*

Mr. Brown moved to strike out all after the word "Constitution," in the 5th line. Lost.

Mr. Jewett offered the following amendment :

In section 20th, 3d line, insert, after the word "divested," the word "forfeited;" which was adopted.

Mr. Everts offered the following amendment:

"Nor any surveys, claims, or titles to lands, which have been rendered or declared null and void by the said Constitution and laws"—to come in after the word "Texas," in the 4th line.

Mr. Rusk moved to re-consider the vote adopting the word "forfeited," after the word "divested," in the 3d line, 20th section.

Which motion was debated at some length ; and,

On motion of Mr. Jewett, the Convention adjourned until half-past 3 o'clock, P. M.

HALF-PAST THREE O'CLOCK, P. M.

The Convention met pursuant to adjournment—roll called—quorum present.

The Convention took up the amendment of Mr. Jewett to the 20th section, 3d line, upon the motion of Mr. Rusk, to re-consider the vote adopting the word "forfeited."

On motion of Mr. Lipscomb, a call of the Convention was made ; and,

On motion of Mr. Armstrong of J., the further call of the Convention was suspended.

The vote was then taken on the re-consideration, by ayes and noes, as follows:

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Bagby, Baylor, Burroughs, Caldwell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Howard, Hunter, Irion, Jones, Kinney, Lewis, Lusk, Lipscomb, McGowan, Miller, Moore, Power, Runnels, Scott, Smyth, Standefer, Tarrant and Ochiltree—32.

Noes—Messrs. Armstrong of R., Clark, Cunningham, Hicks, Jewett, Latimer of L., Latimer of R. R., Lumpkin, McNeill, Parker, Van Zandt, White and Young—13.

So the vote adopting the word "forfeited," was re-considered.

Mr. Howard moved to refer the 20th and 21st sections of the General Provisions, to the committee on the Judiciary ; and, also, the 4th section of the Schedule ; which was debated at some length.

Mr. Hemphill moved to adjourn until half-past 8 o'clock, tomorrow morning. Lost.

Mr. Howard then withdrew his motion to refer the above sec-

tions to the Judiciary Committee, and moved the previous question; which motion was carried.

The main question being the adoption of the 20th section.

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

Ayes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Brown, Burroughs, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—53.

No—Mr. Hunter—1.

So the section was adopted.

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

TUESDAY MORNING, Aug. 5, 1845.

The Convention met pursuant to adjournment—prayer by the Chaplain.

Present—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young.

The journal of the preceding day was read and adopted.

Mr. Davis, from the select committee to whom was referred the communication of the Commissioner of the General Land-Office, of the 31st ult., made the following report:

COMMITTEE ROOM, Aug. 4, 1845.

Hon. THOS. J. RUSK,

President of the Convention:

The select committee, to whom was referred the communica-