

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.

Mr. Latimer of R. R., moved to adjourn until half past 8 o'clock to-morrow.

Lost.

On motion of Mr. Ochiltree, a call of the Convention was ordered.

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

THURSDAY MORNING, Aug. 21, 1845.

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

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

The journal of the preceding day was read and adopted.

Mr. Lipscomb offered the following ordinance :

"Be it ordained by the people of Texas in Convention assembled, That all contracts with the Government of the Republic of Texas, for settling colonies, be, and the same are hereby annulled from and after the adoption of this Ordinance by the people.

And be it further ordained, That all persons who are actually settled under such contracts, shall be guaranteed in the quantity of land they claim under such contract: provided, it shall not exceed six hundred and forty acres to a head of a family, and three hundred and twenty to single men.

And be it further ordained, That all persons aggrieved by the rescision of their contracts, be authorized to sue the Government of Texas to recover such premium lands as they may be entitled to.

And be it further ordained, That this Ordinance be submitted to the people for their adoption, at the same time the Constitution shall be offered to them, and if ratified by them, shall be considered binding and in full force to all intents and purposes."

On motion of Mr. Parker, the rule requiring the Ordinance to be read on three several days, was suspended.

On motion of Mr. Caldwell, the substitute of Mr. Love to the 21st section of the General Provisions, was taken up; and,

On motion of Mr. Lipscomb, the Ordinance and substitute were referred to a special committee, to consist of 15 members.

Mr. Jewett offered the following ordinance:

"Whereas, the various contractors who have entered into contracts with the President of Texas, for settling the vacant and unappropriated lands of the Republic, have generally failed in establishing the settlements, and giving that protection to the frontier contemplated by the terms of their contracts; and whereas, the continuance of these contracts is highly detrimental to the public interest:

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

ORDINANCE.

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

Mr. Cazneau moved a suspension of the rule requiring the Ordinance to lie on the table one day.

Which was carried, and the Ordinance taken up—and referred to the special committee on colonization contracts.

Mr. Rusk moved that the committee just raised, consist of fifteen members.

Carried.

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

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

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

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

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

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

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

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

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

Mr. Darnell moved to insert after the word "taxes," the words "all overseers of roads."

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

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

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

So the amendment was lost.

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

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

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

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

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

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Everts, Gage, Holland, Hunter, Irion, Jewett, Lewis, Lumpkin, Mayfield, McGowan, McNeill, Navarro, Runnels, Standefer, Van Zandt and White—27.

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

So the amendment was adopted.

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

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

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

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

So the amendment was lost.

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

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

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

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

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

So the section was lost.

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

4 O'CLOCK, P. M.

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

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

Messrs. Lipscomb, Love, Henderson, Mayfield, Hogg, Caldwell, Smyth, Wright, Irion, Van Zandt, Lusk, Jewett, Lewis, Miller and Rains—15.

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

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

COMMITTEE ROOM, Aug. 21, 1845.

Hon. THOS. J. RUSK,

President of the Convention:

The Judiciary committee, to whom was referred a resolution of inquiry into the expediency of declaring in the Constitution, that all certificates for head-rights, and all claims, grants and evidences of title to land issued to fictitious persons, or forged,

are, and the same were null and void from the beginning,—have had the same under consideration, and instructed me to report the following substitute :

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

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

Respectfully submitted,

JOHN HEMPHILL, Chairman.

Mr. Young offered the following resolution :

Resolved, That all locations and surveys of land made previous to the 2d day of March, 1836, and lying north of the Sabine river, and within the twenty border leagues, were illegal, and contrary to the policy of the country, and against good morals, and are hereby declared null and void.”

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

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

Mr. Wright offered the following as an additional section :

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

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

Lost; and,

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

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

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

Mr. Mayfield moved a call of the House.

Which was carried; and,

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

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

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

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

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Bagby, Brown, Burroughs, Clark, Cuney, Darnell, Gage, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, Power, Rains, Scott, Standefer and Young—27.

So the amendment was lost.

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

Lost.

The question was then taken on the adoption of the additional section.

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

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

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

So the section was adopted.

Mr. Caldwell offered the following as an additional section:

The County Court shall appoint an Assessor of taxes, and a Tax Collector for each county, under such regulations as may be prescribed by law."

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

"The Assessor and Collector of taxes, shall be appointed in such manner, and under such regulations as the Legislature may direct."

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

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

Mr. Gage offered the following resolution:

Resolved, That the committee on Printing be instructed to contract for and cause to be printed, _____ copies of the State Constitution, for the use of the members of this Convention.

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

On motion of Mr. Gage, the blank in the resolution was filled with "one thousand," and the resolution adopted.

On motion of Mr. Rusk, the vote adopting the additional section offered by Mr. Standefer, was re-considered.

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.

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

Quorum present—journal of yesterday was read and adopted.

Mr. Lipscomb, chairman &c., made the following report :

COMMITTEE ROOM, August 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