

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Journal of the Texas State Convention: Assembled at Austin, Feb. 7, 1866. Adjourned April 2, 1866. [Austin, TX.]: Printed at the Southern Intelligencer Office, 1866.*

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.

deliberately and manly. There was no faltering. His step was firm, his form erect, and his nerves quiet within him. I feel it due to the memory of a friend to make this statement.

I would make another remark about that Convention. I presume no deliberative body ever met under such circumstances. To all human appearance, the cause of Texan independence was hopeless. How was it possible for thirty thousand to resist the overwhelming force brought against Texas? It goes to show that Smyth, with the others who were there, were men of nerve. Relying upon the justice of their cause, they made the declaration. The struggle was successful, and a nation was born. I met the deceased again in 1845, at the Capitol. I found him there, the same cool, quiet, deliberate man—conservative in everything. I have scarcely ever met with one that I would prefer to counsel with, for he was always a safe man. I have enjoyed his confidence when we have met, and I am proud to acknowledge it.

I met him here in this Convention, and the same deliberation, the same coolness, the same determination to do right and benefit his beloved State, I found pervading his heart and controlling his action.

I think he was one of the best men I ever met in my life. He has now left us. He has gone to that undiscovered country where you and I must go, and I hope his mantle will fall upon this Convention.

The resolutions were then adopted, the vote being taken by the delegates rising to their feet in silence, and the Convention adjourned until 10 o'clock A. M., to-morrow.

FRIDAY, February 23d, 1866.

Convention met pursuant to adjournment; prayer by the chaplain; roll called; quorum present; journal of yesterday read and adopted.

On motion of Mr. Record, Mr. Harwood was excused, on account of sickness; and on motion of Mr. Saunders, Mr. Hill was also excused for the same reason.

Reports of committees being in order, Mr. Shields, chairman of the special committee to procure the services of a chaplain, made the following report:

FEBRUARY 23d, 1866.

Hon. J. W. Throckmorton, President of Convention:

The committee charged with the duty of procuring the ser-

vices of a chaplain to attend at the opening of the daily sessions of this body, beg leave to report that they have procured the services of the Rev. T. McRae, in discharge of the duty assigned them.

Adopted.

Mr. Flanagan offered the following resolution :

1st. *Resolved*, That no forced sales shall be made by levy of execution for twelve (12) months from and after the adoption of this resolution.

2d. *Resolved*, That the Legislature may pass any remedial relief for the citizens of the State, that they may deem proper, not in conflict with the Constitution of the United States or the State of Texas.

Read first time, and referred to committee on Condition of the State.

Mr. Camp of Goliad offered the following resolution :

Resolved, That the committee on General Provisions of Constitution be instructed to inquire into the expediency of reserving from forced sale and execution the following property, in addition to the present exceptions, to-wit :

One additional horse or yoke of oxen, twenty head of hogs, twenty-five head of sheep, twenty head of stock cattle, one wagon ; the proceeds of the farm, in addition to the year's allowance now exempted, not to exceed five hundred dollars.

Mr. Shepard moved to lay it on the table.

Yeas and Nays being called for, stood thus :

Yeas—Messrs. Bradshaw, Hancock, Hart, Hurt, Jones of Bastrop, Lane, Ledbetter, Norris, Selman, Shepard and Thomas of Cameron—11.

Nays—Messrs. President, Allen, Anderson, Armstrong, Ball, Beall, Benge, Bryan, Bumpass, Burke, Camp of Goliad, Camp of Upshur, Clements, Dalrymple, Davis of Webb, Davis of Cherokee, Degener, Dickson, Drake, Flanagan, Frazier, Gentry, Giddings, Gurley, Halbert, Henderson, Hunt, Johnson of Tarrant, Johnson of Titus, Jones of Bexar, Latimer, Lindsey, Mabry, McCormack, Murchison, Nelson, Norton, Parker, Paschal, Perry, Phillips, Porter, Ranck, Randolph, Record, Reeves, Richardson, Roberts, Saufey, Shields, Shuford, Shaw, Slaughter, Smith of Colorado, Smith of Lamar, Spaight, Taylor of Fannin, Taylor of Houston, Thomas of Grimes, Thompson, Tyus, Varnell, Walker, Waul, Whitfield, Wilson and Young—67.

Lost.

Resolution adopted.

Mr. Wilson offered the following resolution :

Resolved, That this Convention will proceed to dispose of the business that may come before it, with all reasonable dispatch, and that in order to accomplish this purpose the Convention will meet at 9 o'clock, A. M., and remain in session until 2 o'clock, P. M., if there be sufficient business upon the President's table to require it; and should the business of the Convention demand it, the Convention will hold evening sessions.

Mr. Dickson moved suspension of the rules, in order to take up the resolution.

Carried.

Mr. Record moved to amend by striking out the word "two," and inserting "three."

Lost.

Resolution adopted.

On motion of Mr. Gentry, Mr. Allen was added to committee on Education.

Mr. Walker offered the following resolution:

Hon. J. W. Throckmorton, President of the Convention:

Resolved, That the Hon. Samuel Wilson be authorized and requested to draw the per diem pay and mileage to which the Hon. George W. Smyth of Jasper was entitled as a member of this honorable body, and that he be alike authorized to take charge of the money and effects of the deceased.

Mr. Frazier moved to amend the resolution so as to allow Mr. Wilson to draw pay for the family of the Hon. Geo. W. Smyth, for the whole session of this Convention.

Carried.

The resolution, as amended, was adopted.

Mr. Spaight introduced an ordinance prohibiting special legislation.

Read first time, and, on motion, laid over, to come up in order.

Mr. Norris offered the following:

Whereas, the northern and north-west frontier of the State has heretofore been, and now is, depredated upon by savage tribes of Indians; and it has become unsafe and dangerous to the citizens settled upon said frontier to remain longer; and many of the counties, heretofore settled, have been depopulated; and it is now evident that without efficient protection to life and property, the settlements upon the frontier must and will be broken up, and made still farther into the interior, to the great detriment not only of the citizens thus ruined, but to the interests of the whole State. Therefore:

Be it ordained by the people of the State of Texas, in Convention assembled, That the Governor of the State be, and he

is hereby required, to make propositions, through a commissioner appointed by him, to the four civilized tribes of Indians living north of Red River, the Choctaws, Chickasaws, Cherokees, and Creeks, to cede to them, or any one or more of those tribes, the right to hunt upon the said territory of Texas, exclusive of all other Indians, except such as they may permit to hunt with them; upon condition that they, the said tribe or tribes, will guarantee protection to the frontier settlers, from depredators coming in or passing out through said territory and hunting ground. The hunting grounds to be occupied by said tribe or tribes to consist of the territory belonging to the State, lying above a line beginning at the mouth of the Pecos on the Rio Grande, and terminating at the lower corner of what is known as the Pan Handle, on Red River. Said commissioner shall be empowered to treat with any one or more of said tribes, for the purpose aforesaid, under instructions from the Governor of the State, but shall in no case enter into any stipulation with said Indians that will prohibit the extension of the frontier settlements, or the occupation of said territory by citizens, or soldiers, for all lawful purposes.

Be it further ordained, That the Governor of the State be required to appoint, immediately, a suitable man to repair at once to Washington City, to make known to the President and Secretary of War the true condition of the frontier of Texas, and to procure the consent of the General Government, for the State of Texas to enter into said treaty with said tribes of Indians, for the purpose hereinbefore mentioned; and also to press upon the consideration of the Government the urgent necessity of immediate action, in sending troops to occupy the line of posts heretofore occupied by United States forces, between Red River and the Rio Grande; who shall, while on his way to Washington, if he can do so without delay, see and confer with the commander of this military department, and urge upon him the necessity of occupying said posts immediately, with a sufficient force for the protection of the frontier.

Read first time, and referred to committee on Indian Affairs.

Mr. Varnell offered the following resolution:

Resolved, That the committee on the General Provisions of the Constitution take under consideration the propriety of striking out that portion of Article VII, Section 1, General Provisions of the Constitution, as relates to dueling:

Mr. Bumpass moved to lay on the table. Carried.

Mr. Jones of Bexar, in behalf of the minority of the committee on Condition of the State, made the following report:

COMMITTEE ROOM, February 23d, 1866.

To the Hon. J. W. Throckmorton, President of Convention :

The undersigned, a minority of the committee on the Condition of the State, to which were referred various ordinances and resolutions in relation to secession, beg leave to make this minority report :

We have given the important matter submitted to the committee that serious consideration which it deserves. Acknowledging with the majority of the committee the supremacy of the Constitution of the United States, we find in it no warrant of authority for the act of secession, either by express recognition or by implication, as a reserved right of the States, and can therefore come to no other conclusion than that the act of secession was a nullity from the beginning, as being intended to displace and overthrow the recognized supreme law of the land. Viewing secession as a revolutionary measure, the result of the struggle forces upon us the same conclusion. Abortive attempts at revolution never impress any changes upon the fundamental laws of a government.

The ordinance reported by the majority of the committee virtually asserts that the secession ordinance, and laws enacted under it, have a legal existence, and are rightfully of force up to this time. To this we cannot yield our assent, and it would, in the highest degree, prejudice our application for the resumption by our State of her constitutional relations with the Federal Government. It would not only be regarded as a claim of the right of secession, but the assertion of its success in principle, in the late attempt to enforce it by arms.

To annul it for the future, and declare that it shall have no further effect, is to assert that it is of legal effect, and that by it the supreme law of the land has been legally displaced, and remained so up to our action in this Convention.

The undersigned beg leave to report the accompanying ordinance as a substitute for the ordinance reported by the majority of the committee, and recommend its adoption in lieu thereof.

W. E. JONES,
J. F. JOHNSON,
A. B. NORTON,
R. H. TAYLOR,
J. B. THOMAS,
GEO. W. JONES.

AN ORDINANCE,

Declaring Null and Void the Ordinance of Secession.

We, the People of Texas, by delegates in Convention assembled, acknowledging the supremacy of the Constitution of the United States, and laws made in pursuance thereof, and disclaiming the right of secession, and recognizing an ordinance entitled "An Ordinance to dissolve the union between the State of Texas and the other States united under the compact styled

The Constitution of the United States of America," adopted by a Convention, at Austin, on the first day of February, 1861, to be in contravention to the constitution of the United States, do ordain and declare the same to be null and void *ab initio*.

Received, to come up in order.

Mr. Henderson moved that the special order for the day lie over, in order that the Convention may go into the Committee of the Whole, to proceed to the consideration of the 8th Article of the Constitution, relative to African slavery. Carried.

The hour for adjourning having arrived, on motion of Mr. Saunders, the committee arose, reported progress, asked leave to sit again, and the Convention adjourned until 9 o'clock to-morrow morning.

SATURDAY, February 24th, 1866. -

Convention met pursuant to adjournment. Prayer by the chaplain. Roll called; quorum present; journal of yesterday read and adopted.

Reports of committees being in order, Mr. Randolph made the following report from the committee on Engrossed and Enrolled Ordinances:

COMMITTEE ROOM, February 24th, 1866.

To the Hon. J. W. Throckmorton, President of the Convention:

The committee on Engrossed and Enrolled Ordinances have examined the preamble and resolutions calling the attention of the President of the United States to the present unprotected condition of our Indian frontier, and find the same correctly enrolled and properly signed.

BENTON RANDOLPH, Chairman.

Adopted.

Mr. Davis of Cherokee offered the following resolution:

Be it Resolved, by the delegates in Convention assembled, That the 4th Section of the 5th Article of the Constitution of the State of Texas be amended as follows: After the words,