

TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Journal of the Reconstruction Convention: which met at Austin, Texas. Texas. Constitutional Convention (1868-1869). Austin, TX: Tracy, Siemering & Co., printers, 1870.*

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.

CAPITOL, AUSTIN, TEXAS,
JULY 6, 1868.

Convention met pursuant to adjournment.

Roll called. Quorum present. Prayer by the Chaplain. Journal of yesterday read and adopted.

Mr. Cole made a minority report from Special Committee on Lawlessness and Violence, as follows:

To the Hon. E. J. DAVIS,

President of the Convention :

The undersigned, one of the Special Committee on Lawlessness and Violence, while admitting the correctness of the figures in the committee's report, made on June 30, ult., respectfully dissents from the comments and conclusions of the committee, as set forth in said report, and asks that this dissenting report be spread upon the journal of the Convention.

Respectfully submitted,

COLE, of Hopkins.

Mr. Burnett moved the suspension of the rules, to allow Committee on Public Lands to report.

Rules suspended.

Mr. Lippard, from Committee on Public Lands, reported as follows :

COMMITTEE ROOM,
July 3, 1868.

To the Hon. E. J. DAVIS,

President of the Convention :

SIR: The Committee on Public Lands, to whom was referred the following bills, to-wit :

A bill by Mr. Carter, bearing date June 23, 1868;

A bill by Mr. Pedigo, bearing date June 24, 1868;

A bill by Mr. Lindsay, bearing date June 26, 1868;

And a bill by Mr. Patten, bearing date June 29, 1868;

have had the same under consideration, and after a thorough examination of said bills, are of opinion that they more properly belong to a strictly legislative body, and cannot be entertained by this Convention. Said bills are herewith returned with a recommendation that they be rejected by the Convention. The Committee will, so soon as possible, report articles, to be a part of the Constitution, au-

thorizing the Legislature to pass such bills as will supply the want now felt.

The Committee would respectfully suggest and recommend to the Convention, that the Secretary of the Convention be instructed to number each bill presented to the Convention, believing thereby to facilitate the work of the Convention.

J. H. LIPPARD,
Chairman Committee on Public Lands.

Mr. Burnett offered the following minority report:

COMMITTEE ROOM,
July 6, 1868.

HON. E. J. DAVIS,

President of the Convention:

SIR: The undersigned, of the Committee on Public Lands, dissent from so much of the report of said committee as reports back, and recommends the rejection of the declaration offered by Hon. H. C. Pedigo, with reference to the relinquishment, by the State, of all her right to minerals, etc.; and we respectfully recommend the adoption of the declaration for the following reasons, to-wit:

The majority of the committee, in their report, style the said declaration as legislative, and without reference to the merits or policy of the measure, suggest that it would more properly come before the Legislature; but we are of opinion that the declaration is fundamental in its character, and is a proper matter to be incorporated among the provisions of our organic law.

The reservation, by the State, of all minerals beneath the surface of the earth, had its origin in the days of darkness and barbarism; it was the principle of the common law of England, and also obtained in the civil and the Spanish law, from the latter of which it became a general principle in our own law. It was incorporated into our statutory law in 1837, in the days of the Republic, and it has been held that this special recognition of the doctrine was only declaratory of the existing law, and that the general principle was applicable to all grants of land by the State; so it may now be unquestioned that the State has a legal claim to all salt springs, gold and silver mines, copper, lead, and other minerals beneath the surface of all lands granted by the State.

While such reservation may be suited to governments which recognize the "Divine right of kings," yet we believe it is dictated by a narrow and arbitrary spirit, and is totally at variance with the genius of free Republicanism. We believe our government has derived no substantial benefit from the reservation; but, on the con-

trary, that its effect has been, and will continue to be, to retard the development of the great mineral wealth of the State, of which we have so often justly boasted, and to which we confidently look as a source of future wealth and prosperity. It seems to us it would be better for the State to relinquish all her claims to these minerals, which would encourage the rightful owners of the soil to rapidly develop the mineral resources of the country; and in the increase of taxation arising from the enhanced value of the lands, etc., the State would be fully compensated for the relinquishment. We believe the adoption of the declaration would be in keeping with the enlightened and liberal spirit of this age of progress and improvement, and that it would redound to the interest of the State and the whole people.

Respectfully submitted,

JAMES R. BURNETT,
SAM. W. JOHNSON,

Of Committee on Public Lands.

Mr. Lippard, from the same committee, made the following report upon the resolution of Mr. Yarborough:

COMMITTEE ROOM,
AUSTIN, July 3, 1868.

Hon. E. J. DAVIS,

President of the Convention:

SIR: The Committee on Public Land, to whom was referred a resolution offered by Mr. Yarborough, have had the same under consideration, and have the honor to report the following:

A statement from the General Land Office, appended to the report of the late Attorney General, shows that Capt. Stephen Crosby, late Commissioner of the General Land Office, is a defaulter to the extent of \$17,839 34 in coin. Of this aggregate amount \$3,766 10 appears to be due individual depositors, and \$14,073 24 the State. Individual depositors have to look to the ex-Commissioner alone, who they voluntarily made their banker for their deposits.

So far as the State is concerned, it can and ought to recover against him and sureties.

Your committee are clearly of opinion that in no case should any deposit made during rebel rule be treated as legal and valid. They are unable to perceive why persons who aided and abetted the rebellion should be permitted to take advantage of their own wrong, and claim now to be insured by a loyal convention against losses incurred through the defalcation of a rebel State officer.

They hold that in justice they can go no further than to concede that in case a recovery is had against Capt. Crosby and his sureties, the amount recovered should be credited to those by whom it was

deposited, provided their deposits were made prior to February 1, 1861.

Your committee are not convinced that such a number of "widows and orphans" made deposits prior to the date specified, as to warrant their being made the entering wedge for breaking into the treasury in the manner and to the extent contemplated by the resolution under consideration.

For the foregoing and other reasons they recommend that the resolution do not pass.

J. H. LIPPARD,
Chairman Committee on Public Lands.

Mr. Newcomb offered the following declaration, and asked its reference to the Committee on General Provisions :

Be it declared, by the People of Texas in Convention assembled,
That the following shall be a section in the Constitution of this State :

SECTION.—All children born in this State out of wedlock are legitimate for all purposes of law and fact, and it shall be the duty of the Legislature to pass an act enabling such persons to inherit the estates of their parents and to enforce all the obligations of parent to child.

Referred to Committee on General Provisions.

Mr. Smith, of Galveston, offered the following as proposed sections to the Constitution and asked its reference to the Executive Committee.

SECTION.—There shall be elected by the qualified voters, at stated periods, fixed by law, a Comptroller of Public Accounts and a Treasurer, who shall hold their offices until their successors are qualified.

SEC.—The Comptroller shall be the chief fiscal agent of the State, shall have a salary equal to the Governor of the State, and shall have the power to nominate, through the Governor, to the Senate for confirmation, all assessors and collectors of taxes for the several counties; and to suspend or remove from office, for incompetency, neglect of duty or malfeasance in office, and to appoint their successors, subject to the action of the Senate.

Referred to the Executive Committee.

Mr. Evans, of McLennan, offered the following declaration :

WHEREAS, the people of Texas, on the — day of — A. D., 1861, were in the enjoyment of, submitting to and abiding by, a good and lawful State government, Republican in form, to wit : a

State constitution, framed by delegates in convention assembled, of date August 27th, A. D. 1845, and which had been duly accepted by the Congress of the United States of America, of date December 29th, A. D. 1845, and laws made in pursuance thereof; and whereas, to wit: on the ——— day of February, A. D. 1861, a portion of the people of Texas did make an abortive attempt to overthrow the aforesaid State constitution of A. D. 1845, and to transfer their allegiance from the United States of America to another government; and whereas, said attempt to overthrow the said State government and to transfer their allegiance to another government engendered a conflict of arms; and whereas in said conflict of arms all civil State government in Texas was lost; and whereas the Congress of the United States of America has graciously permitted the people of Texas to meet in convention to frame a State constitution and civil government in Texas; therefore, we, the delegates of the people of Texas, in their name and for them, do declare that the constitution of A. D. 1845, with the following additions, subtractions, changes and alterations, shall, whenever accepted by the Congress of the United States, be the State constitution for the people of Texas.

[*Additions, subtractions, changes and alterations, noted according to the constitution as found printed in Oldham and White's Digest.*]

1. In section 1, article 3, line four, strike out "Republic" and insert "State;" in line six, strike out "Africans and descendants of Africans."

3. In article 3, section 2, strike out entire section.

4. In article 3, section 6, line three, strike out "Republic" and insert "State."

5. In article 3, section 11, line three, strike out word "Republic" and insert word "State."

6. Arrange article 3, section 29 and 30, according to report of Committee on Apportionment.

7. Arrange Article 3, Section 32, according to report of Committee on Apportionment.

8. In Article 3, Section 3, strike out all of said section after the word "government" in line three.

9. In Article 3, Section 34, line two, strike out "three" and insert "six," and in line "three" strike out "three" and insert "six."

10. Strike out Section 35, Article 3, entire, and insert in stead thereof as follows: The city of ———, shall be the Capitol of Texas, for a period of twenty years, commencing in 1870, and until otherwise located by the people.

11. In Article 4, Section 2, line one, strike out "two" and insert "four."

12. Article 4, Section 5, strike out entire and insert

Section 5. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and they shall hold their offices for a period of four years.

13. In Article 4, Section 6, line two, strike out the word "appointed" and in three strike out "twice" and insert "three" times.

14. In line two, Section 7, Article 4, strike out the words "two thousand" and insert "four thousand" and in line three strike out the words "seventeen hundred and fifty" and insert "three thousand."

15. In Article 4, Section 11, lines one and two, strike out the words "who shall be elected by the qualified voters for members of the Legislature," and insert "who shall be appointed by the District Judge of the District," and in line three after the word "by" insert "the District Judge;" in line five after the word "clerk" strike out the section and insert "to fill the vacancy."

16. Strike out Section 12, Article 4 and insert

Section 12. There shall be elected by the qualified electors of the State, an Attorney General, and a District Attorney for each Judicial District, who shall hold their offices for four years, and said Attorney General shall receive a salary of four thousand dollars annually; and the said District Attorneys the sum of one thousand dollars each annually, and such perquisites as may be fixed by law.

17. In Article 4, Section 13, line two, strike out the word "sheriff" and in line five strike out the word "sheriffs" and strike out the last sentence, and insert in its stead, The District Judges shall appoint one sheriff for each county in his District, who shall hold his office for four years, subject to removal by the District Judge, and by indictment and conviction.

18. In Article 5, Section 4, line one, strike out "two" and insert "four;" and in line three strike out the words "for more than four years in any term of six years," and insert "to re-election."

19. In Article 5, Section 5, line three, strike out "two" and insert "four."

20. In Article 15, Section 13, line eight, strike out the words "the Lieutenant Governor," to the words "House of Representatives and no more," and insert "The Lieutenant Governor shall receive such salary, as by law may be fixed, and he shall receive the sum of two thousand dollars annually, until fixed by law."

21. In Article 7, section 6, add the following sentence: And any ballot or vote, cast for any person who by the laws of the United States or this State, is ineligible to the office for which he is voted

for, shall be deemed and held null and void; and the person or persons who are eligible and having the greatest number of votes, shall receive the certificate or evidence of election.

22. In Article 7, Section 22, line four, after the word lots, insert the words "excluding improvements;" and in line five, strike out the word "hereafter."

23. Strike out entire Article 7, Section 27, and insert

Section 27. Taxation shall be equal and uniform throughout the State. All property shall bear tax in proportion to its value, to be ascertained by law, except such property as the Legislature may by a two-third vote of both Houses exempt; And the Legislature shall have power to levy trade, income, occupation and profession taxes. And all lands in Texas upon which the taxes, state, county, corporation or railroad, shall not be paid at any time for three consecutive years, shall forfeit *ipso facto* to the State of Texas, for the use and benefit of the county where situated, and for school purposes; and the Legislature shall, at its first session, make and keep in force laws under which all forfeitures of land shall be declared in the courts of the country.

24. In Article 7, Section 36, strike out the entire section and insert the following:

Section 36. The County Courts for Police purposes, or other officers exercising the functions now exercised by said court, shall have power to pledge the faith and credit of their respective counties to aid in the construction of railroads, or other internal improvements, in the form of bonds or subscriptions. And they shall have the power to assess and collect a tax on all the taxable property in the county, not to exceed two per cent. annually upon the value of the property.

25. Add the following section:

Section 37. All forced sales of real estate in Texas, by sheriffs, marshals, assessors and collectors, assignees in bankruptcy, constables or other officers, administrators and executors, for the purposes of paying debts of decedents, and by guardians of minors, shall be made in parcels not less than 20 or more than 100 acres; And the Legislature at its first session shall provide for the division of land sold by the officers selling.

26. Strike out Article 8, entirely.

27. Strike out Article 11, entirely.

Mr. Evans, of Titus, offered the following resolution:

Resolved, That the Special Committee on Lawlessness and Violence be instructed to produce to the Convention, or to any mem-

ber of the Convention who may desire to examine the same, all the testimony on which the report of June 30 is based, especially :

First. The records of the State Department, particularly the official reports of the clerks of the District Courts.

Second. The records of the Freedmen's Bureau.

Third. The sworn statements of the witnesses.

Mr. Evans, of Titus, moved the suspension of rules, to allow consideration of resolution.

Convention refused to suspend rules.

Mr. Smith, of Galveston, offered the following, and asked its reference to Committee on General Provisions.

SECTION --. That all ordinances and resolutions passed by any Convention of the people, and all acts and resolutions of any Legislature conflicting or inconsistent with the Constitution of the United States and the statutes thereof, and with this constitution, and in derogation of the existence or position of this State as one of the States of the United States of America, are hereby declared null and void from the beginning.

Referred to Committee on General Provisions.

Mr. Thomas offered the following resolution :

Resolved, That the Secretary be instructed to discontinue all newspapers heretofore ordered for the use of this Convention, except 500 copies of the Austin Daily Republican, which he is authorized to continue at a cost not to exceed ten cents for each number.

Mr. Evans, of McLennan, in the Chair.

Mr. Davis, of Nueces, asked a suspension of the rules to take up resolution respecting the sending of Mr. Hamilton, of Bastrop, and Mr. Caldwell to Washington.

Rules suspended.

Mr. Davis offered the following amendment to the original resolution :

Amend by inserting at the end of the original resolution :

Third. The appointment, by this Convention, of Registrars of Voters previous to the coming election.

Fourth. Such other matters as may be referred to the action of Congress, by this Convention.

Fifth, That the sum of eight hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any funds at the disposal of this Convention, to pay the expenses of travel of said committee, in going to and returning from Washington.

Mr. Sumner moved the adoption of the amendment.

Seconded.

Mr. Caldwell moved that Mr. Evans, of Titus, be permitted to occupy the floor thirty minutes over the time allowed by the rules.

Leave granted.

Mr. Wright moved the special order of the day, at ten o'clock, be postponed until after the consideration of resolution before the Convention.

On motion the rule as to the regular hour of adjournment was suspended.

On motion the Convention adjourned till four o'clock this afternoon.

FOUR O'CLOCK P. M.

Roll called. Quorum present.

The question recurred upon the adoption of the amendment, upon which the yeas and nays were called, and resulted as follows :

Yeas—Messrs. Armstrong, of Lamar, Bell, Bellinger, Bledsoe, Brown, Bryant, of Grayson, Bryant, of Harris, Burnett, Carter, Coleman, Constant, Curtis, Degener, Evans, of McLennan, Fayle, Fleming, Foster, Gray, Grigsby, Hamilton, of Bastrop, Hamilton, of Travis, Harne, Hunt, Johnson, of Harrison, Johnson, of Calhoun, Jordan, Kealy, Kendal, Kuechler, Leib, Lindsay, Lippard, Long, Mackey, McCormick, McWashington, Mills, Morse, Mundine, Munroe, Newcomb, Patten, Pedigo, Phillips, of San Augustine, Phillips, of Wharton, Posey, Rogers, Ruby, Scott, Slaughter, Smith, of Galveston, Smith, of Marion, Stockbridge, Sumner, Talbot, Thomas, Watrous, Whitmore, Williams, Wilson, of Brazoria, Wright, Yarborough—62.

Nays—Messrs. Adams, Armstrong, of Jasper, Board, Cole, Evans, of Titus, Flanagan, W. Flanagan, Gaston, Glenn, Harris, Keigwin, Kirk, Muckleroy, Mullins, Sorrell—14.

So the amendment was adopted.

Mr. Armstrong, of Lamar, moved to amend by adding the name of Mr. Whitmore.

Mr. Burnett moved to lay the amendment on the table, upon which the yeas and nays were called and resulted thus :

Yeas—Messrs. Adams, Armstrong of Jasper, Bellinger, Bledsoe, Bryant of Grayson, Burnett, Carter, Cole, Coleman, Constant, Curtis, Fayle, Foster, Gaston, Glenn, Grigsby, Hunt, Johnson of Harrison, Keigwin, Kendal, Lindsay, Lippard, Long, Mackey, McCormick, Mills, Morse, Muckleroy, Mullins, Munroe, Newcomb, Phillips of San Augustine, Phillips of Wharton, Posey, Ruby, Sumner, Talbot, Thomas, Varnell, Williams, Wilson of Brazoria, Wright, Yarborough—43.

Nays—Messrs. President, Armstrong of Lamar, Bell, Board, Brown, Caldwell, Degener, Evans of McLennan, Evans of Titus, Flanagan, W. Flanagan, Fleming, Gray, Hamilton of Travis, Harris, Harne, Johnson of Calhoun, Jordan, Kealy, Keuchler, Kirk, Leib, McWashington, Mundine, Patten, Pedigo, Rogers, Scott, Slaughter, Smith of Galveston, Smith of Marion, Stockbridge, Watrous—33.

So the amendment was laid on the table.

Mr. Sumner moved the previous question upon the adoption of the resolution.

The question recurring, "shall the main question be now put?" the yeas and nays were demanded and resulted thus:

Yeas—Messrs. President, Armstrong, of Lamar, Bell, Bellinger, Bledsoe, Brown, Bryant, of Grayson, Bryant, of Harris, Burnett, Carter, Constant, Curtis, Degener, Evans, of McLennan, Fayle, W. Flanagan, Fleming, Foster, Gray, Grigsby, Hamilton, of Travis, Harne, Hunt, Johnson, of Harrison, Johnson, of Calhoun, Jordan, Kealy, Kendal, Kuechler, Leib, Lindsay, Lippard, Long, Mackey, McCormick, McWashington, Mills, Morse, Muckleroy, Mundine, Munroe, Newcomb, Patten, Phillips, of San Augustine, Phillips, of Wharton, Posey, Rogers, Ruby, Scott, Slaughter, Smith, of Galveston, Smith, of Marion, Stockbridge, Sumner, Talbot, Thomas, Varnell, Watrous, Whitmore, Williams, Wilson, of Brazoria, Wright, Yarborough—63.

Nays—Messrs. Adams, Armstrong, of Jasper, Board, Cole, Evans, of Titus, Flanagan, Gaston, Glenn, Harris, Keigwin, Kirk, Mullins—13.

So the main question was ordered.

The question recurred upon the engrossment of the resolution as amended, upon which the yeas and nays were demanded, and resulted thus:

Yeas—Messrs. President, Armstrong of Lamar, Bell, Bellinger, Bledsoe, Brown, Bryant of Grayson, Bryant of Harris, Burnett, Caldwell, Carter, Coleman, Constant, Curtis, Degener, Evans of McLennan, Fayle, Fleming, Foster, Gray, Grigsby, Hamilton of Travis, Harne, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Kealy, Kendal, Kuechler, Leib, Lindsay, Lippard, Long, Mackey, McCormick, McWashington, Mills, Morse, Mundine, Munroe, Newcomb, Patten, Phillips of San Augustine, Phillips of Wharton, Posey, Rogers, Ruby, Scott, Slaughter, Smith of Galveston, Smith of Marion, Stockbridge, Sumner, Talbot, Thomas, Varnell, Watrous, Whitmore, Williams, Wilson of Brazoria, Wright, Yarborough—63.

Nays—Messrs. Adams, Armstrong of Jasper, Board, Cole,

Evans of Titus, Flanagan, W. Flanagan, Gaston, Glenn, Harris, Keigwin, Kirk, Muckleroy, Mullins—14.

So the resolution as amended was ordered to be engrossed.

Mr. Johnson, of Calhoun, moved a suspension of rules, to put resolution upon its final passage.

Carried.

Resolution as amended was read a third time. The yeas and nays being called for resulted thus :

Yeas—Messrs. President, Armstrong of Lamar, Bell, Belinger, Bledsoe, Brown, Bryant of Grayson, Bryant of Harris, Buffington, Burnett, Carter, Coleman, Constant, Curtis, Degener, Evans of McLennan, Fayle, Fleming, Foster, Gray, Grigsby, Hamilton of Travis, Harne, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Kealy, Kendal, Keuchler, Leib, Lindsay, Lippard, Long, Mackey, McCormick, McWashington, Mills, Morse, Mundine, Munroe, Newcomb, Patten, Phillips of San Augustine, Phillips of Wharton, Posey, Rogers, Ruby, Scott, Slaughter, Smith of Galveston, Smith of Marion, Stockbridge, Sumner, Talbot, Thomas, Varnell, Watrous, Whitmore, Williams, Wilson of Brazoria, Wright, Yarborough—63.

Nays—Messrs. Adams, Armstrong of Jasper, Board, Cole, Evans of Titus, Flanagan, W. Flanagan, Gaston, Glenn, Harris, Keigwin, Kirk, Muckleroy, Mullins, Sorrell—15.

So the resolution was passed.

On motion the Convention adjourned until nine o'clock to-morrow morning.