

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,
August 4, 1868.

Convention met pursuant to adjournment.

Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

Mr. Evans of McLennan presented a petition from the citizens of Hamilton, Comanche, Erath and Bosque counties, asking for the formation of a new county, and asked its reference to the Committee on Counties and County Boundaries.

Mr. Lippard offered the following report from the Committee on Public Lands.

Reading was dispensed with, and ordered to be printed :

REPORT OF COMMITTEE ON PUBLIC LANDS.

To the Hon. E. J. DAVIS,

President of the Convention :

SIR: The Committee on Public Lands, having given careful consideration to the matter relating to that department of the Constitution, presents the results of its labors in the article now presented for the consideration of the Convention.

Your committee, having in view the many difficulties surrounding the land titles of the State, have endeavored to do justice to all concerned, and to place the land titles of the State on a more permanent and secure basis for all time to come.

JOHN H. LIPPARD,
Chairman.

DECLARATION.

SECTION 1. That all titles for lands lying in this State, granted under or by authority of the Crown of Spain, and of the Republic of Mexico, which were deposited in the General Land Office on or before the twelfth day of February, 1837, excepting those land titles which were declared void by the Constitution of the Republic of Texas; and all patents for lands issued by authority of the Republic and State of Texas down to ————, excepting those land claims declared null and void by the Constitution of the State of Texas, and excepting those lands covering and including salt springs, lakes and licks, and mines of gold, silver and copper, are hereby declared valid.

SEC. 2. That all the headright titles for lands lying within the twenty frontier leagues bordering on the United States of the North, which were granted before the closing of the land offices in 1835 by the consultation of the chosen delegates of all Texas, are hereby declared valid.

SEC. 3. That no title for land purporting to have been granted by the Crown of Spain, or of the Republic of Mexico, which was not deposited in the General Land Office on or before the twelfth day of February, A. D. 1837, shall be admissible in evidence to defeat a genuine patent or claim for land located before such older title was deposited in said office.

SEC. 4. That no land title purporting to have been granted by the Crown of Spain or of the Republic of Mexico, which was not deposited in the General Land Office on or before the twenty-seventh day of August, A. D. 1845, shall be admissible as evidence in behalf of any party in any suit for land.

SEC. 5. That all surveys of land heretofore made, and not returned to the General Land Office within the time prescribed by an act entitled "An act concerning surveys of land," passed February 10, A. D. 1852, are hereby declared null and void.

SEC. 6. That all land certificates located after the thirtieth day of August, A. D. 1856, upon lands which were titled before such location of certificate, are hereby declared null and void.

SEC. 7. That all land certificates heretofore located which conflict with land surveys of an older date, for want of correct maps or connection of surveys, may be re-located by the owner of such certificates.

SEC. 8. That all land certificates shall be surveyed and returned to the General Land Office within _____ years from and after the meeting of the first Legislature after the adoption of this Constitution, and not thereafter.

SEC. 9. That the Commissioner of the General Land Office is hereby required to issue patents upon all legal surveys of lands deposited in his office, made by virtue of any genuine land certificate, excepting upon lands covering and including salt springs, licks and lakes, and mines of gold, silver and copper.

SEC. 10. That all conveyances of lands heretofore made by authority of any court having lawful jurisdiction of the parties and land in dispute, excepting in cases of fraud, are hereby declared valid and binding.

SEC. 11. That all public lands heretofore reserved for the benefit of railroads, shall hereafter be subject to survey by virtue of any genuine land certificate, excepting lands covering and including salt springs, licks and lakes, and mines of gold, silver and copper.

SEC. 12. That the Legislature shall not hereafter grant lands to any person or persons, except to actual settlers upon the same, and in lots not exceeding ——— acres to each settler.

SEC. 13. That the residue of the public domain, after the survey of all genuine land certificates and claims now issued, shall be granted only to actual settlers upon the same, under such regulations as the Legislature may provide; provided, no such grant shall exceed ——— acres, and at not less than one dollar per acre.

SEC. 14. That all lands granted to railroad companies which were not alienated by said companies before this date, in conformity with the terms of their charters and the laws of the State, under which the grants were made, are hereby declared forfeited to the State.

SEC. 15. That no person shall be deprived of his, her or their right to land, by adverse possession or limitation of less than fourteen years; provided, that no adverse possession of land, or law of limitation, shall ever operate against the State.

SEC. 16. That no adverse possession of land, or law of limitation, shall avail any person or persons who claim without title, or who claim under fraudulent title.

SEC. 17. That married women, infants, and insane persons, shall not be barred of their rights to land by adverse possession, or law of limitation of less than fourteen years from and after the removal of each and every of their legal disability and hindrance.

Mr. Varnell, from the Committee on Appointments, made the following report :

COMMITTEE ROOM,
Austin, Texas, August 3, 1868.

Hon. E. J. DAVIS,
President of the Convention :

Sir : The Committee on Apportionments, who have had under consideration the apportioning of the State into four congressional districts, have instructed me to report the following ordinance and recommend its passage :

SECTION. 1. *Be it ordained by the people of the State of Texas in Convention assembled,* That the territory comprised within the limits of the following named counties shall compose the congressional districts of the State of Texas, until otherwise provided by law.

SEC. 2. The congressional district shall be composed of the counties of Anderson, Angelina, Cherokee, Harrison, Henderson, Houston, Jasper, Jefferson, Liberty, Nacogdoches, Newton, Orange, Panola,

Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity, Tyler, Hardin, Chambers, Vanzandt, and Wood.

SEC. 3. The second congressional district shall consist of the counties of Marion, Upshur, Davis, Bowie, Titus, Red River, Lamar, Hopkins, Kaufman, Fannin, Grayson, Hunt, Collin, Dallas, Tarrant, Cook, Denton, Montague, Wise, Parker, Palo Pinto, Jack, Clay, Wichita, Archer, Young, Throckmorton, Wilbarger, Harde- man, Knox, Haskill, Jones, Shackelford, Stephens, Ellis, Johnson, Callahan, Eastland, Erath, Hood, and Taylor.

SEC. 4. The third congressional district shall consist of the coun- ties of Galveston, Brazoria, Fort Bend, Harris, Austin, Montgom- ery, Walker, Grimes, Brazos, Washington, Burleson, Milam, Ro- berts, Madison, Leon, Freestone, Limestone, Falls, McLennan, Mat- agorda, Wharton, Bosque, Hill, and Navarro.

SEC. 5. The fourth congressional district will consist of the coun- ties of Colorado, Fayette, Lavaca, Jackson, Bastrop, Travis, Wil- liamson, Bell, Hamilton, Comanche, Brown, Coleman, Runnells, Concho, McCulloch, San Saba, Lampasas, Burnett, Llano, Mason, Kimball, Edwards, Kerr, Gillespie, Blanco, Bandera, Comal, Hays, Caldwell, Guadalupe, Bexar, Wilson, Gonzales, DeWitt, Karnes, Goliad, Victoria, Calhoun, Refugio, San Patricio, Nueces, Bell, Live Oak, Atascosa, Medina, Walde, Dawson, Zavala, Frio, Dimmitt, Lasalle, McMullen, Encinal, Duval, Cameron, Hidalgo, Star, Za- pata, Webb, Kinney, Presidio, Maverick, and El Paso.

Read and ordered to be printed.

Mr. McCormick, from the Committee on Contingent Expenses, made the following report :

COMMITTEE ROOM,
August 1, 1868.

Hon. E. J. DAVIS,

President of the Convention :

*The Committee on Contingent Expenses, to which was re-com- mitted the resolution engrossed by the Convention, in reference to the pay and discharge of the official reporter, with instructions to report the resolution offered by Mr. Hamilton, of Travis, as a sub- stitute for said engrossed resolution, in obedience to said instru- ctions, have authorized me to report in favor of the adoption of said resolution of Mr. Hamilton as a substitute for the engrossed resolu- tion.

A. P. McCORMICK,

Chairman.

Mr. Armstrong of Jasper, offered the following declaration :

AN ORDINANCE

Authorizing F. E. Hughes to establish a ferry, or a drawbridge, across Powder Horn Bayou.

Be it enacted by the people of Texas in Convention assembled, That F. E. Hughes is authorized to establish a ferry, or a draw bridge, across Powder Horn Bayou, in Calhoun county, provided such ferry, or drawbridge, shall not interrupt the free navigation of said bayou.

Be it further ordained, That the privilege aforesaid shall be vested in the said Hughes for the period of thirty years.

Be it further ordained, That such ferry, or drawbridge, shall be liable to all the taxes which are imposed by law upon ferries and drawbridges, and that the ordinance take effect from and after its passage.

On motion, the declaration was referred to the Committee on Internal Improvements.

Mr. Armstrong, of Lamar, moved that Mr. Bryant, of Grayson, be added to the Committee on Apportionment.

There being no objection, it was so ordered.

Mr. Thomas offered the following resolution :

Resolved, That until the 15th day of the present month, both morning and evening sessions of this Convention be devoted to the formation of a Constitution.

[Mr. Evans, of McLennan, in the chair.]

Mr. Davis, of ~~Meek~~, offered the following resolution :

Resolved, That this Convention will take a recess from and after the 20th August, to last till 3d day of December next, subject, in the meantime, to be called together by the ———, if deemed necessary.

Resolved, 2. That hereafter the Convention will act on no business other than the formation of a Constitution, and the ordinances or declarations necessarily incident thereto, and the ordinance providing for the collection of the School Fund due by the State.

Mr. Davis, of Nueces, moved a suspension of the rules for the immediate consideration of the resolution, upon which the yeas and nays were demanded and resulted thus :

Yeas—Messrs. President, Armstrong of Lamar, Bellinger, Bledsoe, Bryant of Grayson, Burnett, Carter, Coleman, Curtis, DeGENER, Downing, Evans of McLennan, Fayle, Fleming, Goddin, Hunt,

Johnson of Harrison, Jordan, Kealy, Kendall, Keuchler, Leib, Lindsay, Lippard, Long, Mackey, McWashington, Munroe, Newcomb, Oaks, Patten, Pedigo, Phillips of San Augustine, Posey, Schuetze, Scott, Thomas, Vaughan, Watrous, Whitmore, Williams, Wilson of Milam, Wright, Yarborough—44.

Nays—Messrs. Armstrong of Jasper, Bell, Board, Boyd, Buffington, Cole, Constant, Flanagan, W. Flanagan, Foster, Gaston, Glenn, Hamilton of Travis, Harris, Horne, Johnson of Calhoun, Keigwin, Morse, Mundine, Phillips of Wharton, Slaughter, Smith of Galveston, Smith of Marion, Stockbridge, Varnell, Wilson of Brazoria—26.

So the Convention refused to suspend the rules.

The President announced the hour had arrived to take up the regular business made the special order of the day, which was the motion to reconsider the vote by which the substitute to the report of the Committee on Internal Improvements was laid on the table.

Mr. Hamilton, of Travis, moved that consideration of the motion be postponed until Friday, August 10, 1868, at 10 o'clock.

Carried.

The next business in order was the consideration of the substitute offered by Mr. Evans, of McLennan, to the twenty-third section of the report of the Executive Committee.

The question recurred upon the adoption of the substitute, upon which the yeas and nays were demanded and resulted thus:

Yeas—Messrs. President, Bell, Bledsoe, Burnett, Coleman, Constant, Curtis, Degener, Downing, Evans of McLennan, Foster, Hunt, Johnson of Harrison, Jordan, Kendall, Keuchler, Leib, Lippard, Long, Muckleroy, Newcomb, Oaks, Patten, Ruby, Smith, of Galveston, Slaughter, Smith of Marion, Sumner, Talbot, Whitmore, Wilson of Brazoria—31.

Nays—Messrs. Armstrong of Jasper, Armstrong of Lamar, Beltinger, Board, Boyd, Brown, Bryant of Grayson, Buffington, Carter, Cole, Fayle, Flanagan, W. Flanagan, Gaston, Glenn, Hamilton of Travis, Harris, Horne, Johnson of Calhoun, Kealy, Keigwin, Lindsay, Mackey, McWashington, Morse, Mundine, Munroe, Pedigo, Phillips of San Augustine, Phillips of Wharton, Posey, Rogers, Schuetze, Scott, Stockbridge, Thomas, Varnell, Vaughan, Watrous, Williams, Wilson of Milam, Wright, Yarborough—44.

So the Convention refused to adopt the substitute.

Mr. Hamilton, of Travis, moved the previous question upon the adoption of the 23d Section.

Previous question seconded.

The question recurred "Shall the main question be now put?"

Main question ordered.

The question recurred "Shall the section be adopted?" upon which the yeas and nays were demanded and resulted thus:

Yeas—Messrs. Adams, Armstrong of Jasper, Armstrong of Lamar, Bellinger, Board, Boyd, Brown, Bryant of Grayson, Buffington, Carter, Cole, Fayle, Flanagan, Flanagan W., Fleming, Gaston, Glenn, Hamilton of Travis, Harris, Horne, Johnson of Harrison, Johnson of Calhoun, Kealy, Keigwin, Leib, Lindsay, Mackey, McWashington, Mundine, Munroe, Pedigo, Phillips of San Augustine, Phillips of Wharton, Posey, Rogers, Schuetze, Scott, Slaughter, Smith of Galveston, Stockbridge, Thomas, Varnell, Vaughan, Watrous, Whitmore, Williams, Wilson of Milam, Wright, Yarrow—48.

Nays—Messrs. President, Bell, Bledsoe, Burnett, Coleman, Constant, Curtis, Degener, Downing, Evans of McLennan, Foster, Hunt, Johnson of Harrison, Jordan, Kendal, Kuechler, Lippard, Long, Morse, Muckleroy, Newcomb, Oaks, Patten, Ruby, Smith of Marion, Sumner, Talbot, Wilson of Brazoria—28.

So Section 23 was adopted.

Mr. Patten offered the following amendment to Section 24.

Amend Section 24, line two, strike out the words "now fixed by law," and insert "of three thousand dollars."

The amendment was agreed to.

Mr. Sumner offered the following amendment:

Amend by striking out the words "and Attorney General," in line two.

The Convention refused to adopt the amendment.

Mr. Armstrong of Jasper, offered the following substitute for Section 24.

The Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, and Superintendent of Public Instruction, shall receive for their salaries such sums of money as shall be fixed by law.

The Convention refused to adopt the amendment.

Mr. Lindsay moved to substitute the word "his," instead of "their," in third line.

Adopted.

Section 24, upon motion, was adopted.

Mr. Evans, of McLennan, offered the following amendment.

Amend by striking out Section 25, entire.

The Convention refused to adopt the amendment.

On motion, Section 25 was stricken out.

Mr. Evans, of McLennan, offered the following amendment to Section 26.

Amend by striking out the entire last sentence.

The Convention refused to adopt the amendment.

Mr. Constant offered the following amendment.

Strike out "it shall be filled by appointment by the Governor," and insert "the Governor shall fill it by appointment."

The Convention refused to adopt the amendment.

Upon motion, Section 26 was adopted.

The President announced the next business in order was the report of the Committee on General Provisions.

Mr. Buffington moved that the Convention go into Committee of the Whole, upon the report.

Lost.

Mr. Burnett moved to adopt each section *seriatim*.

Carried.

On motion, the preamble to the Bill of Rights was adopted.

Mr. Evans, of McLennan, offered the following amendment.

Strike out the word "subordination," and insert "subordinates."

Mr. Armstrong moved a reconsideration of vote adopting the amendment.

Carried.

Mr. Hamilton, of Travis, moved the insertion of the word "in," before the word "subordination," third line of Section 1.

Carried.

Mr. Lindsay offered the following amendment to Section 1.

In third line, in place of the word "therein" between the words "embodied," and "can," insert the word "herein."

Mr. Evans, of McLennan, moved that the letter "t" before the word "therein," be stricken out.

Carried.

On motion, Section 1 was adopted.

Mr. Burnett offered the following amendment to Section 2.

Add, after the word "privilege," "except in consideration of public service."

The Convention refused to adopt the amendment.

Mr. Carter moved to insert the word "are," between the words "men," and "is," in first line of Section 2.

The Convention refused to adopt the amendment.

Mr. Bellinger moved to insert the letter "n," before the word "or," in second line.

Lost.

On motion, Section 2 was adopted.

Under the rule, the Convention adjourned until 4 o'clock this afternoon.

AFTERNOON SESSION—FOUR O'CLOCK.

Roll called. Quorum present.

Mr. Smith, of Marion, asked temporary leave of absence for Mr. Grigsby.

Leave granted.

Mr. Bryant, of Grayson, asked leave of absence for Mr. Scott, of Lamar, for an indefinite period.

Mr. Armstrong, of Lamar, asked leave of absence for Mr. Whitmore, after Thursday next.

Leave granted.

Mr. Wilson, of Brazoria, asked temporary leave of absence for Mr. McCormick.

Leave granted.

The chair decided, under the resolution regulating the sessions of the Convention, that in the evening session each member, beginning alphabetically, may call up any particular business he may desire; but the Convention failing to dispose of the business so called up, it could not be called up on the following evening.

Mr. Hamilton, of Travis, appealed from the decision of the chair.

The question recurred, "shall the decision of the chair stand as the decision of the House?" upon which the yeas and nays were demanded and resulted thus:

Yeas—Messrs. Armstrong of Jasper, Bell, Bellinger, Bledsoe, Boyd, Brown, Butler, Burnett, Coleman, Curtis, Degener, Downing, Evans, of McLennan, Fayle, Hunt, Johnson of Harrison, Kendal, Kuechler, Leib, Lippard, McWashington, Morse, Munroe, Newcomb, Oaks, Patten, Schuetze, Slaughter, Smith of Galveston, Smith of Marion, Sumner, Thomas, Talbot, Vaughan, Whitmore, Williams, Wilson of Milam, Yarborough—38.

Nays—Messrs. Adams, Armstrong, of Lamar, Board, Buffington, Carter, Cole, Constant, Flanagan, W. Flanagan, Fleming, Foster, Hamilton of Travis, Harris, Horne, Johnson, of Calhoun, Jordan, Kealy, Keigwin, Mackey, Mills, Muckleroy, Mundine, Pedigo, Phillips of San Augustine, Phillips, of Wharton, Rogers, Stockbridge, Varnell, Watrous, Wilson, of Brazoria, Wright—31.

So the decision of the chair was sustained.

Mr. Armstrong, of Lamar, called up the report of the Committee on Counties and County Boundaries, and asked to make the special order for Friday next.

Mr. Thomas moved to lay the whole matter on the table, upon which the yeas and nays were demanded and resulted thus:

Yeas—Messrs. Adams, Armstrong of Jasper, Bellinger, Bledsoe, Boyd, Brown, Burnett, Coleman, Constant, Downing, W. Flanagan, Glenn, Harris, Johnson of Harrison, Johnson of Calhoun, Kealy, Keigwin, Kendal, Lindsay, Mackey, Munroe, Newcomb, Phillips of San Augustine, Posey, Rogers, Smith of Galveston, Smith of Marion, Thomas, Wilson, of Milam—29.

Nays—Messrs. President, Armstrong of Lamar, Bell, Board, Buffington, Carter, Cole, Curtis, Degener, Evans of McLennan, Fayle, Flanagan, Fleming, Foster, Goddin, Hamilton of Travis Horne, Hunt, Jordan, Kuechler, Leib, Lippard, McWashington, Mills, Morse, Muckleroy, Mundine, Oaks, Patten, Pedigo, Phillips of Wharton, Schuetze, Slaughter, Stockbridge, Sumner, Talbot, Varnell, Vaughan, Watrous, Whitmore, Williams, Wilson, of Brazoria, Wright, Yarborough—44.

So the Convention refused to lay the matter upon the table.

The question recurred upon the adoption of the declaration respecting the formation of the county of Webster, upon which the yeas and nays were demanded, and resulted thus:

Yeas—Messrs. President, Armstrong of Lamar, Bell, Bellinger, Bledsoe, Brown, Buffington, Carter, Cole, Downing, Evans of McLennan, Fayle, Flanagan, Fleming, Foster, Goddin, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Keigwin, Kendal, Kuechler, Lippard, Long, McWashington, Mills, Morse, Muckleroy, Mundine, Oaks, Patten, Pedigo, Phillips of Wharton, Scott, Schuetze, Slaughter, Smith of Galveston, Stockbridge, Talbot, Varnell, Vaughan, Watrous, Whitmore, Williams, Wilson of Brazoria, Wilson of Milam, Wright, Yarborough—48.

Nays—Messrs. Armstrong of Jasper, Bellinger, Board, Boyd, Bryant of Grayson, Burnett, Constant, Degener, W. Flanagan, Glenn, Harris, Leib, Lindsay, Munroe, Newcomb, Phillips of San Augustine, Posey, Rogers, Smith of Marion, Sumner, Thomas—21.

So the declaration was adopted.

The next declaration of the report being the declaration for the formation of the county of Oakland.

Mr. Schuetze moved to re-commit the declaration to the Committee on Counties and County Boundaries.

Mr. Johnson, of Calhoun, moved to lay the declaration upon the table.

Motion withdrawn.

The declaration was referred to the Committee on Counties and County Boundaries.

The declaration creating the county of Delta was next in order.

Mr. Cole offered the following amendment:

Amend by adding, in line seven, section one, after the word "beginning," these words:

"Provided that the county seat of Hopkins county shall be removed from Tarrant to Sulphur Springs."

The amendment was adopted.

Mr. Constant moved the whole subject be indefinitely postponed,

Upon which the yeas and nays were demanded, and resulted thus:

Yeas—Messrs. Armstrong of Jasper, Bledsoe, Board, Boyd, Brown, Bryant of Grayson, Burnett, Constant, Glenn, Harris, Leib, Lindsay, Long, Munroe, Newcomb, Patten, Phillips of San Augustine, Posey, Rogers, Ruby, Sumner, Thomas, Varnell, Wright—24.

Nays—Messrs. President, Armstrong of Lamar, Bell, Bellinger, Buffington, Carter, Cole, Curtis, Downing, Evans of McLennan, Fayle, Flanagan, W. Flanagan, Fleming, Foster, Goddin, Hunt, Johnson of Calhoun, Jordan, Kealy, Kendal, Kuechler, Lippard, McWashington, Mills, Morse, Muckleroy, Mundine, Oaks, Pedigo, Phillips of Wharton, Schuetze, Scott, Slaughter, Smith of Galveston, Stockbridge, Talbot, Watrous, Whitmore, Williams, Wilson of Brazoria, Wilson of Milam, Yarborough—43.

So the Convention refused to postpone.

The question recurred upon the adoption of the declaration.

It was adopted.

The declaration next in order was the declaration creating the county of Richland.

Mr. Evans, of McLennan, moved to amend by the insertion of the word "and" in line number one of section three, instead of the word "or."

Carried.

The declaration next in order was the declaration creating the county of White.

Mr. Kealy moved to lay the declaration on the table.

Carried.

Under the rules the Convention adjourned until nine o'clock to-morrow morning.