

# 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](mailto:rarebooks@law.utexas.edu).

If you are uncertain whether you need permission to use these materials, please contact us at [rarebooks@law.utexas.edu](mailto:rarebooks@law.utexas.edu).

CAPITOL, AUSTIN, TEXAS,  
AUGUST 13, 1868.

Convention met pursuant to adjournment.

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

Mr. Buffington moved to suspend the rules to take up the resolution authorizing the Sergeant-at-Arms to discharge three or more pages of the Convention.

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

Yeas—Messrs. Armstrong of Jasper, Armstrong of Lamar, Boyd, Buffington, Cole, Constant, Evans of McLennan, Evans of Titus, Fleming, Foster, Gaston, Glenn, Grigsby, Harn, Kealy, Keigwin, Lindsay, McCormick, Morse, Muckleroy, Munroe, Pedigo, Smith of Galveston, Thomas, Whitmore—25.

Nays—Messrs. President, Bell, Bellinger, Bledsoe, Board, Brown, Bryant of Grayson, Bryant of Harris, Butler, Burnett, Caldwell, Carter, Curtis, Degener, Downing, Fayle, Flanagan, Goddin, Harris, Hunt, Johnson of Harrison, Jordan, Kendal, Keuchler, Kirk, Lippard, Long, McWashington, Mundine, Newcomb, Oaks, Patten, Phillips, of San Augustine, Rogers, Ruby, Schuetze, Scott, Stockbridge, Sumner, Talbot, Watrous, Wilson of Brazoria, Wilson of Milam, Wright, Yarborough—45.

So the Convention refused to suspend the rules.

Mr. Munroe moved that all petitions to be referred to the Committee on Counties and County Boundaries, be so referred without reading.

Carried.

Mr. Board introduced the following resolution :

WHEREAS, The journals of this Convention should be recorded in a neat and uniform hand, and

WHEREAS, The Secretary has employed the services of a man fully competent to make a correct record, and who has progressed to the 276th page of said record ; and

WHEREAS, The Secretary, after acknowledging to this House, "that he would pay to said employe the amount voted himself, to have the work done," has now, without cause, discharged him ; therefore, be it

*Resolved*, That the Secretary be, and he is hereby required to

continue the services of said employe, at least, until the adjournment of this Convention.

Mr. Board moved a suspension of the rules to take up the resolution.

Lost.

Mr. Sumner moved to reject the resolution.

The Convention rejected the resolution.

Mr. Schuetze offered the following declaration :

*Be it ordained by the people of Texas in Convention assembled,* That an act of the so-called — Legislature of the State of Texas, known as an act to punish certain offences committed on Sunday, approved December 16, 1863, and sections 1, 2, 3, 4, of an act of the so-called eleventh Legislature of the State of Texas, passed November 13, 1866, known as chapter 178 of an act amendatory of an act to punish certain offences committed on Sunday, approved December 16, 1863, be and are hereby declared null and void.

*Be it further ordained,* That all prosecutions and judicial proceedings now pending in any court of this State, on the part of the State of Texas for the violation of any of said acts, shall at once be abandoned, and that this ordinance shall take effect from and after its passage.

Mr. Schuetze moved a suspension of the rules to take up declaration.

Mr. Evans, of McLennan, moved a call of the House.

Call sustained.

Mr. Smith, of Galveston, moved a suspension of the call.

Call suspended.

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

Yeas—Messrs. President, Armstrong of Jasper, Bell, Bellinger, Brown, Bryant of Harris, Caldwell, Carter, Constant, Degener, Downing, Evans, of McLennan, Fleming, Goddin, Hamilton of Travis, Horne, Hunt, Johnson of Harrison, Johnson of Calhoun, Keigwin, Kendal, Leib, Lindsay, Lippard, Long, Mackey, Mundine, Munroe, Newcomb, Oaks, Patten, Pedigo, Posey, Ruby, Schuetze, Smith of Galveston, Stockbridge, Sumner, Thomas, Varnell, Vaughan, Wilson of Milam, Wright—43.

Nays—Messrs. Armstrong of Lamar, Bledsoe, Board, Boyd, Bryant of Grayson, Buffington, Burnett, Cole, Curtis, Evans of Titus, Fayle, Flanagan, W. Flanagan, Foster, Gaston, Glenn, Grigsby, Harris, Harn, Kealy, Kuechler, Kirk, McCormick,

McWashington, Morse, Muckleroy, Phillips of San Augustine, Phillips, of Wharton, Rogers, Scott, Slaughter, Talbot, Watrous, Whitmore, Wilson of Brazoria, Yarborough—36.

So the Convention refused to suspend the rules.

Mr. Burnett offered the following declaration :

### A DECLARATION

Requesting Major General Reynolds to abolish the act of the Eleventh Legislature of the State of Texas organizing the county courts, and defining the powers and jurisdiction thereof.

WHEREAS, The Eleventh Legislature of the State of Texas passed an act entitled "an Act to organize the county courts, and defining the powers and jurisdiction thereof," approved October 25, 1866, which said act has in its operations failed to accomplish any practical good; but on the contrary, has proved to be onerous and oppressive to the people; and, whereas, it is believed the welfare and interests of the people of Texas would be subserved by the repeal of said act; and, whereas, it may be twelve months or more before a lawful Legislature can be assembled, whereby said act can be legally repealed by the authority of the people; and, whereas, said act, together with all other laws of the State of Texas, are, by the Reconstruction Acts of Congress, declared provisional only, and in all respects subject to the Military Commander of this military district and the permanent authority of Congress, at any time to abolish, modify, control or supersede the same; therefore,

*Be it declared by the delegates of the people of Texas in Convention assembled,* That Brevet Major General J. J. Reynolds, Commander of the Fifth Military District, comprising the State of Texas, be, and he is hereby most respectfully requested to abolish or repeal said act of the Eleventh Legislature, and order that all business now pending in said county courts be transferred to the district courts of the respective counties, and that all records, books and papers whatever pertaining to said county courts be placed in the hands of the district clerks of the several counties; and further, to order all causes now pending in said county courts to be placed in regular order on the dockets of the district courts of the respective counties, to be disposed of by said district courts as in original cases.

*Be it further declared,* That a copy of this declaration, signed by the President, and countersigned by the Secretary, be forwarded to Major General Reynolds, through his Excellency, E. M. Pease, Provisional Governor of Texas.

Laid over under the rules.

Mr. Mundine offered the following declaration, and asked its reference to the Committee on Counties and County Boundaries :

### A DECLARATION

Defining and establishing the line between the counties of Burleson and Brazos, and locating the county site of Burleson county.

SECTION 1. *Be it declared by the people of Texas in Convention assembled*, That Davidson's Creek be and is hereby made and declared to be the line between the counties of Burleson and Brazos, and that all that part of the county of Burleson lying east and north of said line be, and is hereby attached to the county of Brazos.

SEC. 2. *Be it further declared*, That the town of Lexington be, and is hereby established the county site of Burleson, until otherwise changed by the legal votes of said county, and that this declaration take effect from and after its passage.

It was so referred.

Mr. Armstrong, of Jasper, introduced the following declaration, and asked its reference to the Committee on State Affairs :

### AN ORDINANCE

Appropriating the State tax of the county of Jefferson, collected for the present year (1868) for the purpose of repairing the damage done recently by lightning to the court house of said county.

*Be it ordained by the people of Texas in Convention assembled*, That the State tax collected in the county of Jefferson, for the present year, A. D. 1868, be, and the same is hereby appropriated for the repairing of the courthouse of said county, recently much injured by lightning, and that the county court of said county is hereby authorized to control said moneys for the purposes aforesaid.

It was so referred.

Mr. Carter introduced the following resolution :

*Resolved*, That the yeas and nays be omitted in the reading of the Journals, unless by the request of some member to have them read.

Mr. Carter asked that the rules be suspended for the immediate consideration of the resolution.

Rules suspended and resolution passed.

Mr. Armstrong of Lamar asked leave of absence for Mr. Rogers. Leave granted.

Mr. Munroe offered the following resolution :

*Resolved*, That Brevet Major General J. J. Reynolds be requested to instruct the County Judge of Trinity county to permit W. L. Culbreath, who has lately been appointed County Clerk of said county, to enter upon the discharge of the duties of his office, by his entering into a bond for the sum of one hundred dollars, with good and sufficient security.

Laid over one day under the rules.

Mr. Munroe asked a suspension of the rules for the consideration of the resolution.

Lost.

Mr. Board offered the following resolution :

*Resolved*, That no member be allowed to speak more than ten minutes at any one time hereafter, and only be allowed one speech on any one subject.

Laid over under the rules.

The President announced the unfinished business was the report of the Committee on General Provisions,\* and upon the amendment offered by Mr. McCormick to section four of the general provisions.

Mr. Degeuer moved to lay the amendment upon the table.

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

Yeas—Messrs. Armstrong of Jasper, Bledsoe, Board, Boyd, Bryant of Grayson, Butler, Burnett, Caldwell, Degener, Evans of Titus, Flanagan, W. Flanagan, Gaston, Glenn, Hamilton of Travis, Horne, Keigwin, Kendal, Kirk, Mackey, Morse, Muckleroy, Munroe, Oaks, Patten, Smith of Galveston, Sumner, Talbot, Varnell, Vaughan, Whitmore, Williams, Wright—33.

Nays—Messrs. President, Armstrong of Lamar, Bell, Bellingger, Brown, Buffington, Carter, Constant, Downing, Evans of McLennan, Fayle, Fleming, Foster, Goddin, Grigsby, Harris, Harn, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Kealy, Leib, Lindsay, McCormick, Mills, Mundine, Newcomb, Ped-

\* For report, see page 286.

igo, Phillips of San Augustine, Phillips of Wharton, Posey, Schuetze, Scott, Slaughter, Stockbridge, Thomas, Watrous, Wilson of Brazoria, Wilson of Milam, Yarborough—41.

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

The question recurred upon the adoption of the amendment.

It was adopted.

Mr. Evans of McLennan offered the following amendment:

Amend by adding at the close of the section the following words: "And all ballots or votes cast at any election for any person who is at the time ineligible under the laws of the United States, or this State, to hold office, are declared and shall be held, for all purposes and by all persons, null and void."

Mr. McCormick asked leave of absence for Mr. Fayle.

Leave granted.

Mr. Horne offered the following amendment to the amendment:

And that all election returns shall be taken as valid, and the purging of the ballot-box for fraud shall be forever prohibited.

Mr. Flanagan offered the following substitute to the amendment:

In all elections by the people the vote shall be by ballot, until the Legislature shall otherwise direct; and in all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given *viva voce*, except in the election of their officers.

On motion, the amendment of Mr. Horne was laid upon the table.

The question recurred upon the adoption of the amendment offered by Mr. Evans of McLennan.

It was not adopted.

Mr. Butler moved a reconsideration of the vote adopting Mr. McCormick's amendment.

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

Yeas—Messrs. Armstrong, of Jasper, Bledsoe, Board, Boyd, Bryant of Grayson, Butler, Burnett, Caldwell, Curtis, Degener, Flanagan, W. Flanagan, Fleming, Gaston, Glenn, Hamilton of Travis, Harn, Horne, Hunt, Johnson of Harrison, Keigwin, Kendal, Kuechler, Kirk, Mackey, Morse, Muckleroy, Munroe, Newcomb, Oaks, Posey, Schuetze, Smith of Galveston, Smith of Marion, Sumner, Talbot, Varnell, Vaughan, Watrous, Williams, Wright—41.

Nays—Messrs. President, Armstrong of Lamar, Bell, Bellinger, Brown, Buffington, Carter, Constant, Downing, Evans of McLennan, Evans of Titus, Foster, Goddin, Grigsby, Harris, Johnson of Calhoun, Jordan, Kealy, Leib, Lindsay, Lippard, McCormick, McWashington, Mundine, Phillips of Wharton, Ruby, Slaughter,

Stockbridge, Thomas, Whitmore, Wilson of Brazoria, Wilson of Milam, Yarborough—33.

So the vote was reconsidered.

Mr. Buffington moved the previous question upon the passage of section four.

Previous question seconded.

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

The main question was ordered.

The question recurred upon the adoption of section four.

It was adopted.

Section five, upon motion, was adopted.

Mr. Armstrong of Jasper offered the following amendment to section six :

Strike out in second line the words, "except for the purposes of education."

Upon motion, the amendment was laid upon the table.

Mr. Phillips of San Augustine offered the following amendment :

Strike out all after "law," in the sixth line.

Mr. Flanagan moved the previous question.

Previous question seconded.

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

The main question was ordered.

The question recurred upon the adoption of section six.

It was adopted.

Mr. Evans of McLennan moved to lay section seven on the table.

Lost.

Section seven, upon motion, was adopted.

Section eight, upon motion, was adopted.

Mr. Munroe offered the following amendment :

Amend section nine by inserting after the words "foreign power," in line two, the words "excepting the office of Assessor and Collector of United States Internal Revenue Taxes."

Mr. Flanagan moved to lay the amendment upon the table.

Withdrawn.

Mr. Johnson of Calhoun offered the following amendment :

Insert the words "when the salary or emoluments of such office shall exceed one thousand dollars," after the word "power" in the second line.

Ruled out of order.

Mr. Flanagan moved the previous question.

Previous question seconded.

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

The main question was ordered.

The question recurring upon the adoption of section nine, it was adopted.

Section ten, upon motion, was adopted.

Section eleven, upon motion, was adopted.

Mr. Evans, of McLennan, offered the following as an additional section:

SEC. 12. All civil officers shall reside within the State, and all district or county officers within their districts or counties, and shall keep their offices at such places therein as may be required by law.

Upon the adoption of the section the yeas and nays were demanded and resulted thus:

Yeas—Messrs. President, Armstrong of Jasper, Armstrong of Lamar, Bell, Bledsoe, Boyd, Brown, Bryant of Harris, Buffington, Burnett, Carter, Cole, Constant, Curtis, Downing, Evans of McLennan, Evans of Titus, Fleming, Foster, Glenn, Goddin, Grigsby, Hamilton of Travis, Harris, Horne, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Kealy, Keigwin, Kendal, Kuechler, Lippard, McCormick, McWashington, Mills, Morse, Munroe, Newcomb, Oaks, Phillips of San Augustine, Phillips of Wharton, Ruby, Schuetze, Smith of Galveston, Sumner, Talbot, Thomas, Whitmore, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—54.

Nays—Messrs. Board, Bryant of Grayson, Flanagan, W. Flanagan, Harn, Lindsay, Mackey, Posey, Scott, Smith of Marion, Vaughan—11.

So the Convention adopted the section.

Mr. Hamilton of Travis asked that Mr. Caldwell be excused.

Excused.

Previous question seconded upon the adoption of section twelve.

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

The main question was ordered.

The question recurred upon the adoption of section twelve.

It was adopted.

Mr. Hamilton of Travis offered the following amendment to section thirteen:

Amend by adding, "except in cases where the right of the wife is acquired after the creation of the debt."

The amendment was adopted.

Mr. Hamilton of Travis moved that when the Convention adjourns it adjourns until to-morrow morning at nine o'clock.

Carried.

Mr. Evans of McLennan moved to strike out all of the section

after the word "by" in first line, and the word "law" be inserted after the word "by" in the first line.

Amendment adopted.

Mr. Armstrong of Jasper offered the following amendment to section thirteen :

"And that married women, infants and insane persons, shall not be barred of their rights of property by adverse possession, or law of limitation, of less than seven years from and after the removal of each and all of their respective legal disabilities," to be inserted after the word "law."

The amendment was adopted.

Mr. Varnell offered the following amendment to the amendment :

Insert after the word "personal," in first line, "and the increase of the same."

It was adopted.

Mr. Johnson of Calhoun moved to strike out the word "that" in — line.

Section thirteen, on motion, was adopted.

Carried.

The death of Hon. Thaddeus Stevens being announced,

The Convention adjourned until to-morrow morning at nine o'clock.

---

CAPITOL, AUSTIN, TEXAS,  
AUGUST 14TH, 1868.

Convention met pursuant to adjournment.

Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday read and adopted.

Mr. Carter moved that, in respect to Hon. Thaddeus Stevens, the Sergeant-at-Arms be directed to have the flag over the Capitol immediately lowered to half-mast.

It was so ordered.

Mr. Pedigo, Chairman of the Committee on Counties and County Boundaries, made the following report :

COMMITTEE ROOM,  
Austin, Texas, August 13, 1868.

Hon. E. J. DAVIS,

President of the Convention :

SIR: Your Committee, on Counties and County Boundaries, to