

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.

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

whom was referred a resolution introduced by Mr. Carter, in reference to the creation of new counties, and requiring all new counties to contain at least six hundred square miles, instead of nine hundred square miles, as required by the Constitution of 1845, have had the same under consideration, and a majority of the committee have instructed me to report the following as a substitute for section twenty-four of the General Provisions of the new Constitution, as reported by the Committee on General Provisions, to wit :

SECTION 24. "The Legislature may, from time to time, create new counties for the convenience of the people ; provided, however, that no new county shall be created which shall contain, or reduce the county or counties, or either of them, from which it may be taken, to a less area than six hundred square miles, except by the concurrence of a majority of two-thirds of each branch of the Legislature."

And to suggest to the Convention the propriety of its adoption.

All of which is respectfully submitted.

H. C. PEDIGO,
Chairman.

Mr. Phillips, of Wharton, from the Committee on Commerce and Manufactures, reported as follows :

COMMITTEE ROOM,
Austin, August 14, 1868.

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

SIR: The Committee on Commerce and Manufactures has instructed me to report as follows :

The committee is of the opinion that the condition of the country makes it the true policy of this State to lend encouragement to every kind of manufactures for which the raw material is produced or found within the State. The whole country offers inducements to capital to find investment in manufactories of one description and another ; and our State cannot enjoy the advantages resulting from such investments within her limits, without offering some peculiar advantages to capitalists in return. The difficulties encountered by those engaging in the business of manufacturing in the interior of the State are very great, owing to the want of facilities for transportation of machinery.

The committee is of the opinion that to exempt from forced sale, for a period of five years, such machinery as may be devoted to

manufacturing purposes of public utility, would furnish some encouragement to the establishment of such manufactories.

The committee therefore recommend the adoption by the Convention of the accompanying declaration on this subject (marked "A"), as one of the several provisions of the Constitution.

Your committee is also of the opinion that it is important to the commercial interest of a large portion of the State, that Sabine City should be made a port of entry, and the committee therefore recommend the adoption of the accompanying resolution memorializing the Congress of the United States on this subject.

While it may not be deemed strictly within the province of your Committee to do so, the committee cannot refrain from expressing their opinion of the necessity of establishing an industrial bureau, for the collection, preservation, and publication of statistics in relation to the commerce, manufactures, agriculture, and various industries of the State. Our State is of such great territorial extent that persons visiting it for the purpose of seeking homes are unable to obtain information respecting its different parts, except by personal inspection, at great expense and inconvenience, and go away dissatisfied; who, under other circumstances, would be able to find homes adapted to the pursuit or business in which they desire to engage. Your committee is of opinion that it would contribute very greatly to the settlement of the State, to establish an office at the Capital for the purpose of collecting and publishing to the world the various advantages offered by the different parts of our State to immigrants, and your committee believes that the information which would be thus collected, would in other respects be of great public utility.

Your committee therefore recommend the passage by the Convention of a declaration providing for the establishment of a bureau of industrial resources, as a part of the constitution.

All of which is respectfully submitted.

W. J. PHILLIPS,
Chairman.

DECLARATION "A."

WHEREAS, It being the policy and duty of the people of Texas to foster and encourage the industrial interests of its citizens, particularly as regards its manufacturing interests; therefore, be it

Resolved, That all machinery imported into this State for manufacturing purposes shall be exempt from taxation for five years from the date of its being put in operation.

Mr. Pedigo moved that the rules be suspended to take up the following resolution respecting Sabine Pass.

Be it resolved by the people of Texas in Convention assembled:

First. That the Congress of the United States be and are hereby requested to make by law, Sabine Pass, in the State of Texas, a port of entry.

Second. That copies of this resolution, signed by the President of this Convention, and attested by the Secretary thereof, be forwarded to the Speaker of the House of Representatives and the President of the Senate of the United States.

Rules suspended, resolution read and adopted.

Mr. Evans of McLennan, moved a further suspension of the rules to put resolution on its passage.

Rules suspended, resolution read third time and adopted.

Mr. Evans, of McLennan, moved a suspension of the rules to introduce the following resolution :

Resolved, That the Secretary of this Convention be, and he is hereby authorized to draw a warrant against the contingent fund of this Convention, in favor of Fred. Slaughter, for the sum of \$1.50 per day, for his services as page or employe of this body, in carrying the mail of the members of this Convention from this Hall to the postoffice and back.

Rules suspended, resolution read second time and agreed to.

Rules further suspended, resolution read third time and passed.

Mr. Thomas offered the following resolution :

AN ORDINANCE.

We, the people of Texas in Convention assembled, do ordain and declare that :

SECTION 1. The constitution adopted by a convention of the people, on the twenty-seventh day of August, 1845, accepted by the Congress of the United States, on the twenty-ninth day of December, 1845, and amended by the people of this State on the sixteenth day of January, 1850, is the Constitution of the State of Texas, except as hereinafter provided.

SEC. 2. The laws of this State are the laws passed in pursuance of the Constitution of this State, as defined in the preceding section.

SEC. 3. The so-called ordinance of secession, adopted by a pretended convention of the people of Texas, on the first day of February, 1861, is, and was from the beginning, null and void.

SEC. 4. All laws or parts of laws, whether fundamental or statutory, which conflict with the Constitution or laws of the United States; or are inconsistent with the great fundamental truth, that all men have equal civil and political rights, are null and void, and shall forever remain without force or effect in this State.

SEC. 5. The people of this State, with its present organization, or so much thereof as is loyal to the United States, are hereby remitted to their rightful constitution and laws, as defined in sections one, two and four of this ordinance.

SEC. 6. All offices now vacant, or which may hereafter become vacant, shall be filled in the manner prescribed by law; provided, however, that prior to the first Monday in August, one thousand eight hundred and seventy, all members of the Legislature, and all officers, before entering upon the duties of their offices, shall take the following oath or affirmation:

SEC. 7. This ordinance shall take effect and be in force from and after notice of its approval by the Congress of the United States.

Mr. Evans of McLennan moved a suspension of the rules to consider the resolution.

Lost.

Mr. Fayle introduced a declaration, desiring its reading to be dispensed with and referred to the Committee on Internal Improvements.

It was so ordered.

Mr. Vaughan offered the following

DECLARATION.

Be it declared by the people of Texas in Convention assembled:

First, That the Police Court of Guadalupe county shall have authority to levy a special tax, for the purpose of paying off the present indebtedness of said county; provided said special tax shall not exceed twenty cents on each hundred dollars' worth of property;

and, further provided, that the occupation tax levied by virtue of this ordinance shall not exceed that levied by the State.

Second. The assessor and collector of said county shall assess and collect the special tax authorized above, when ordered so to do by the Police Court of said county.

Mr. Vaughan moved a suspension of the rules for the immediate consideration of the resolution.

Lost.

The President announced the unfinished business of yesterday to be next in order, and was upon the report of the Committee on General Provisions,* and upon the adoption of section fourteen.

Mr. Hamilton of Travis offered the following substitute :

The homestead of a family, not to exceed two hundred acres of land in the country, or a lot or lots in a town or city, not to exceed two thousand dollars in value at the time of the acquisition of the same, and without reference to the subsequent value thereof, is hereby protected from forced sale for any debts hereafter contracted, except for purchase money due thereon ; and the assent of the wife, if the owner be a married man, shall be necessary to the transfer and alienation of the same.

Mr. Buffington moved the adoption of the substitute.

Substitute adopted.

Mr. Burnett offered the following amendment to the substitute :

“And the consent of the wife shall only be given in the manner now prescribed by law, or in such manner as the Legislature may hereafter point out.”

Mr. Philips of Wharton offered the following substitute :

The Legislature shall have power to protect by law, from forced sale, a certain portion of the property of all heads of families. The homestead of a family not to exceed two hundred acres of land (not included in a town or city), or any city, town, or village lot or lots, not to exceed two thousand dollars in value at the time of their designation as a homestead, and without reference to any improvements thereon, shall not be subject to forced sale for any debts, except they be for the purchase thereof, for the taxes assessed thereon, or for labor or materials expended thereon ; nor shall the owner, if a mar-

*For report see page 236.

ried man, be at liberty to alienate the same, unless by consent of the wife, and in such manner as may be prescribed by law.

The question recurred upon the adoption of the substitute offered by Mr. Phillips of Wharton.

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

Yeas—Messrs. President, Armstrong of Jasper, Bell, Bellinger, Bledsoe, Board, Boyd, Bryant of Grayson, Bryant of Harris, Bufington, Burnett, Carter, Constant, Curtis, Degener, Downing, Evans of McLennan, Evans of Titus, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Glenn, Goddin, Hamilton of Travis, Harn, Horne, Hunt, Johnson of Harrison, Johnson of Calhoun, Jordan, Kealy, Keigwin, Kendal, Kuechler, Kirk, Leib, Long, Mackey, McCormick, McWashington, Morse, Muckleroy, Mundine, Munroe, Newcomb, Oaks, Phillips of San Augustine, Phillips of Wharton, Rogers, Ruby, Schuetze, Slaughter, Stockbridge, Talbot, Vaughan, Watrous, Whitmore, Williams, Wilson of Brazoria, Wilson of Milam, Wright, Yarborough—64.

Nays—Messrs. Brown, Caldwell, Grigsby, Harris, Lindsay, Smith of Galveston, Smith of Marion, Sumner, Thomas—9.

So the substitute was adopted.

Mr. Flanagan moved to strike out "2000" and insert "5000."

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

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

Yeas—Messrs. President, Armstrong of Jasper, Armstrong of Lamar, Bledsoe, Brown, Bryant of Grayson, Constant, Downing, Grigsby, Hunt, Jordan, Kealy, Kuechler, Munroe, Newcomb, Phillips of San Augustine, Schuetze, Scott, Smith of Marion, Sumner, Thomas, Whitmore, Williams, Wilson of Milam, Wright—25.

Nays—Messrs. Bell, Bellinger, Board, Boyd, Bryant of Harris, Bufington, Burnett, Carter, Curtis, Degener, Evans of McLennan, Evans of Titus, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Glenn, Goddin, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Johnson of Calhoun, Keigwin, Kendal, Kirk, Leib, Lindsay, Long, Mackey, McCormick, McWashington, Morse, Muckleroy, Mundine, Oaks, Rogers, Slaughter, Smith of Galveston, Stockbridge, Talbot, Varnell, Vaughan, Watrous, Wilson of Brazoria, Yarborough—48.

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

Mr. Lindsay offered the following substitute :

The Legislature shall have power to protect by law such portion

of the personal property of the heads of families from forced sale for debts contracted after the passage of such law as it may deem necessary. But the homestead of a family, not to exceed five thousand dollars in value at the time of its acquisition and dedication, whether situated in or out of a town or city, is herein protected from forced sale for debts hereafter contracted, except for the purchase money, for labor and materials in making improvements thereon, for taxes which may become due to the State or for municipal purposes. Nor shall a married man have the right to alienate the same without the consent of the wife, to be given and ascertained in such manner as may be prescribed by law.

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

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

Yeas—Messrs. President, Armstrong of Jasper, Armstrong of Lamar, Bell, Board, Boyd, Bryant of Grayson, Bryant of Harris, Buffington, Carter, Constant, Curtis, Evans of McLennan, Evans of Titus, Flanagan, W. Flanagan, Gaston, Glenn, Goddin, Hamilton of Travis, Harris, Harn, Horne, Hunt, Johnson of Harrison, Johnson of Calhoun, Keigwin, Kendal, Kirk, Leib, Long, McCormick, McWashington, Morse, Muckleroy, Mundine, Oaks, Phillips of San Augustine, Phillips of Wharton, Rogers, Schuetze, Scott, Slaughter, Thomas, Varnell, Vaughan, Watrous, Whitmore, Wilson of Brazoria, Yarborough—50.

Nays—Messrs. Bellinger, Bledsoe, Brown, Burnett, Caldwell, Degener, Downing, Fayle, Jordan, Kealy, Kuechler, Lindsay, Munroe, Newcomb, Smith of Marion, Talbot, Williams, Wilson of Milam, Wright—19.

So the substitute was laid upon the table.

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

It was adopted.

Mr. Phillips, of San Augustine, offered the following amendment :
Strike out "town or city," and insert "city, town or village."

The amendment was adopted.

Mr. Yarborough offered the following amendment :

Amend by adding after "shall have power," "and it shall be their duty."

The amendment was adopted.

Mr. Talbot offered the following amendment :

Strike out "200" and insert "320."

On motion, the amendment was laid upon the table.

Mr. McCormick moved to strike out the word "made."

Carried.

The question recurred upon the adoption of the substitute as amended.

It was adopted as section 14.

Section 15, on motion, was adopted.

Section 16, on motion, was adopted.

Section 17, on motion, was adopted.

Section 18, on motion, was adopted.

Section 19, on motion, was adopted.

Mr. Munroe offered the following amendment to section 20 :

Land property shall be sold for taxes due thereon under such rules as the Legislature may prescribe.

Mr. Evans, of McLennan, 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 20.

It was adopted.

Mr. Buffington offered a substitute for section 21.

The substitute was withdrawn.

Mr. Evans, of McLennan, offered to amend by inserting after the word "made," in first line, "by the first Legislature," and strike out all after the word "in," in same line, to the word "of," in second line.

Amendment withdrawn.

Mr. Wilson, of Brazoria, offered the following substitute for section 21 :

Provision shall be made by the first Legislature for the condemnation and sale of all lands for taxes due thereon, and every five years thereafter, of all lands, the taxes upon which have not been paid to that date.

The substitute was adopted.

Mr. Buffington moved to strike out "every five years."

Lost.

The question recurred upon the adoption of the substitute.

It was adopted.

Mr. Phillips, of San Augustine, moved to strike out section 22.

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

Yeas—Messrs. Bell, Bellinger, Boyd, Bryant of Harris, Butler, Carter, Evans of Titus, Fayle, Flanagan, W. Flanagan, Goddin, Grigsby, Kendal, Leib, Lindsay, Mackey, Morse, Phillips of San Augustine, Sumner, Varnell, Whitmore—21.

Nays—Messrs. President, Armstrong of Lamar, Armstrong of Jasper, Bledsoe, Board, Bryant of Grayson, Buffington, Burnett,

Curtis, Degener, Downing, Evans of McLennan, Harn, Horne, Johnson of Harrison, Kealy, Keigwin, Kuechler, Kirk, Long, McWashington, Muckleroy, Munroe, Newcomb, Patten, Phillips of Wharton, Rogers, Ruby, Schuetze, Talbot, Thomas, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—35.

So the Convention refused to strike out section 22.

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

Amend section 22, line one, by inserting after the word "individuals" the words "and banking companies or corporations."

On motion, the amendment was adopted.

Mr. Armstrong, of Jasper, moved to strike out the word "shall" and insert the word "may."

Lost.

Mr. Sumner offered the following amendment:

By making second line read as follows: "or other paper to be circulated as money."

Mr. Degener moved the previous question.

Mr. Phillips, of San Augustine, moved a call of the House.

Call sustained.

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

CAPITOL, AUSTIN, TEXAS,
August 15, 1868.

Convention met pursuant to adjournment.

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

Mr. Whitmore, from the Committee on Finance, reported as follows:

COMMITTEE ROOM,
Austin, August, 1868.

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

Your Committee to whom was referred a resolution offered by Mr. Johnson, of Harrison, authorizing the Secretary of the Convention to grant James B. Cassidy a certificate for ——— dollars, for writing done for the secretaries of the Convention, have had the