

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,
DECEMBER 29, 1868.

Convention met pursuant to adjournment.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and adopted.

The President presented a petition from the citizens of the county of Refugio, asking that the county seat of that county be changed to Lamar.

Referred to the Committee on Internal Improvements.

Also a petition from citizens of Western Texas, praying a division of the State.

Referred to the Committee on Division of the State.

Mr. Board introduced a declaration, asking its reference to the Committee on Internal Improvements, without reading.

It was so referred.

Mr. Varnell presented a petition from the citizens of Western Texas, praying a division of the State.

Referred to Committee on Division of the State.

Mr. Flanagan, from the Committee on Internal Improvements, reported as follows :

COMMITTEE ROOM,
December 29, 1868.

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

SIR: Your Committee on Internal Improvements have had before them a declaration to incorporate the Galveston Canal Company. Your committee have carefully examined the same, and instruct me to report it back, and to recommend its passage; with the proviso:

That it does not interfere with the present channel, leaving it as it now is, so that all interested parties can avail themselves of the improvement or not, as they may please.

Respectfully submitted,

J. W. FLANAGAN,
Chairman Committee.

Mr. Smith moved to suspend the rules to take up the declaration. The Convention refused to suspend the rules.

Mr. McCormick, from the Committee on Contingent Expenses, reported as follows :

COMMITTEE ROOM,
December 29, 1868.

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

SIR: The Committee on Contingent Expenses, to whom was referred the resolution of Mr. Bryant, in reference to allowing mileage to the Enrolling Clerk and the Sergeant-at-arms; and the resolution of Mr. Burnett, in reference to the paying the Houston Union for printing the Constitution so far as engrossed; and the resolution in reference to paying for the copies of Flake's Bulletin furnished members, have had the same under consideration, and a majority of the committee instruct me to report that, in the opinion of the committee, the mileage to their respective homes, and returning therefrom to the Convention, should be allowed the Sergeant-at-arms and the Enrolling Clerk; and that the Houston Union should be paid the sum of four hundred dollars for the publication of the Constitution and distribution of five thousand copies thereof; and that they therefore recommend the passage of the two first named resolutions. In reference to the third resolution, a majority of the committee take pleasure in endorsing the sentiments expressed in it, and believe that it would be nothing more than a simple act of justice to make the payment provided for in said resolution; but the committee have information that the proprietor of Flake's Bulletin has, through his paper, publicly informed the Convention that he could not and would not accept any compensation for the papers furnished the Convention, and a regard for his feelings and wishes in the matter renders it, in the judgment of the committee, improper for the Convention to insist on paying for that which the proprietor has respectfully tendered as a complimentary present, and has previously declined to furnish on any other terms. The members of the Convention, in their individual capacities, can with great propriety, requite this courtesy extended to the body, and in a manner much more gratifying to the known feelings, and much more conducive to the permanent and substantial interest of the proprietor of Flake's Bulletin, than the urging upon him of acceptance of payment for his voluntary kindness. The majority of the committee feel that the Convention is under obligations to the proprietor of Flake's Bulletin for his conduct in the premises; but it is such an

obligation as cannot be cancelled by payment in money. They, therefore, recommend that this resolution do not pass.

All of which is respectfully submitted.

A. P. McCORMICK,
Chairman Committee.

Mr. Burnett moved the rules be suspended to take up the resolution for the payment of the Houston Union.

Rules suspended.

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

Mr. Patten moved to lay the resolution upon the table.

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

Yeas—Messrs. Armstrong of Jasper, Bell, Bledsoe, Brown, Butler, Hamilton of Bastrop, Harris, Keigwin, Kirk, Lippard, Morse, Newcomb, Patten, Whitmore—14.

Nays—Messrs. Adams, Armstrong of Lamar, Board, Bryant of Grayson, Bryant of Harris, Buffington, Burnett, Caldwell, Cole, Curtis, Downing, Evans of McLennan, Evans of Titus, Fayle, Flanagan, Fleming, Gaston, Gray, Hamilton of Travis, Harn, Horne, Johnson of Harrison, Jordan, Kealy, Kendal, Keuchler, Lindsay, McCormick, McWashington, Mullins, Mundine, Munroe, Pedigo, Phillips of San Augustine, Posey, Rogers, Ruby, Scott, Slaughter, Smith, Sorrel, Stockbridge, Sumner, Varnell, Vaughan, Watrous, Williams, Wilson of Brazoria, Wilson of Milam, Wright—50.

So the Convention refused to lay upon the table.

Mr. Patten offered the following amendment :

“Strike out four hundred dollars (\$400), and insert one hundred dollars (\$100).”

Mr. Burnett moved to lay the amendment on the table.

Mr. Patten moved the subject be made the special order of the day for the first Monday in February, at nine o'clock.

Mr. Burnett moved the previous question.

Previous question seconded.

The question recurred, “Shall the main question be now put?”

Main question ordered.

The question recurring upon the adoption of the resolution,

It was adopted.

Mr. Ruby moved a further suspension of the rules to put the resolution on its final passage.

Rules suspended.

Resolution read a third time and passed.

Mr. Varnell introduced the following declaration, and asked its reference to the Committee on Public Lands :

CONVENTION HALL,
December 29, 1868.

Hon. E. J. DAVIS,

President Constitutional Convention :

SIR: Whereas, on the 22d day of May, 1854, there was issued from the Adjutant General's office a bounty land certificate in favor of Henry Koontz, for three hundred and twenty acres of land, for his services in the Army of the Republic, in the years of 1836-7, as set forth in said certificate ; and,

Whereas, Said certificate was never located, but was lost, as will appear from evidence herewith accompanying ; and,

Whereas, The said certificate rightfully belongs to and is the property of Henry Koontz, Jr., the son and only heir of grantee, deceased, and who is still a minor, and now about to attain his majority ; therefore,

Be it ordained by the Delegates in Convention assembled, That the Commissioner of the General Land office issue a duplicate certificate, in favor of the said Henry Koontz, for three hundred and twenty acres of land, on the production of satisfactory evidence that such certificate was issued from the Adjutant General's office, and was lost and never located.

Mr. Lindsay introduced the following declaration :

WHEREAS, The members of this Convention were elected and assembled together under the provisions of the several acts of Congress, known as the reconstruction laws, passed "for the more efficient government of the rebel States ;" and which acts prescribe a mode by which the loyal people in the rebel States may re-establish legal and loyal civil governments, in conformity with the constitution and laws of the national government ; the said rebel States having overthrown and destroyed all legitimate authority in their several local jurisdictions, and thus divested the people of all regularly organized legal municipal governments ; and,

Whereas, No legal, legitimate State governments can be formed in the rebel States, unless it be done in accordance with the Constitution of the United States and the national will, clearly and unmistakably expressed through its properly constituted organs, in what are called the reconstruction laws; which are the only means and guaranty left the loyal people in said States for the re-establishment of legal governments; and,

Whereas, This Convention derives all its *enabling powers* from the expression of the national will in the reconstruction laws, and which powers are coupled with a solemn pledge of protection to the loyal people of the rebel States, until such time as they can, in the manner pointed out in said laws, frame a constitution in conformity therewith, and shall receive the approval of a majority of the qualified electors of the several States, as well as of Congress; and,

Whereas, The framing of a constitution of the State, and of a loyal civil government therefor, according to the provisions of the act of Congress of March 23, 1867, is the specific and sole duty assigned by said act and its supplements to this body; therefore,

Be it resolved by the loyal people of Texas, thus assembled in Convention, That it is the imperative duty of this body to proceed, as speedily as may be, to frame a constitution for the State of Texas, to be submitted to a vote of the qualified electors of the State for their approval, at such time as this body, in its discretion, may consider authorized and warranted by said reconstruction laws.

Resolved further, That, if the constitution so framed shall be approved by the qualified electors, when so submitted, it will then be the duty of this Convention, unless it chooses to do so at the time of the submission of the constitution, to designate and fix a time, in its discretion, and *give notice*, for the election of loyal incumbents to the various offices created by and prescribed in said constitution.

And Whereas, There is great diversity of opinion among the members of this Convention in reference to its powers of legislation, and its rights and authority to divide the State of Texas—so much so that its action is clogged and obstructed in relation to the special business for which it was assembled; therefore,

Be it resolved, That by reason of this diversity of opinion, and in consequence of this doubt, this question of power to legislate, except as already specially granted in the reconstruction acts, and of the right to divide the State, be remitted to the consideration of Congress, along with the constitution, when approved by the people, to determine, in its wisdom, whether additional power should be con-

2D SESS.—10

ferred upon this body, to enable it to accomplish such object; or whether the matter of division of the State shall be submitted to the first Legislature which may be convened under said constitution.

Mr. Newcomb made the point of order that, as the declaration had reference to the division of the State, its consideration was not in order while Mr. Thomas' resolution remained unrepealed.

The President decided that the declaration, contemplating indirectly the division of the State, was out of order.

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

WHEREAS, The counties of Montague, Wise, Jack, Clay, Wichata, Archer, Throckmorton, Baylor, Wilbarger, Hardeman, Knox, Haskell, Shackelford, Stephens, Palo Pinto, Parker, Hood, Erath, Comanche, Brown, Coleman, Runnels, Taylor, Callaban and Eastland, having been infested by hostile Indians; therefore be it

Resolved, That the Committee on State Affairs be requested to take into consideration the propriety of extending the time for collecting the tax in said frontier counties, and report at an early day.

It was so referred.

Mr. Evans, of McLennan, moved a suspension of the rules to take up the report of the Committee on Education.

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

Yeas—Messrs. Armstrong of Lamar, Bell, Bledsoe, Bryant of Grayson, Butler, Caldwell, Carter, Cole, Downing, Evans of McLennan, Fayle, W. Flanagan, Fleming, Hamilton of Bastrop, Hamilton of Travis, Harn, Horne, Johnson of Harrison, Kealy, Keigwin, Kuechler, Kirk, Lindsay, Mackey, McCormick, McWashington, Morse, Mundine, Newcomb, Patten, Phillips of San Augustine, Posey, Rogers, Scott, Sorrell, Stockbridge, Sumner, Vaughan, Watrous, Whitmore, Williams, Wilson of Brazoria, Wilson of Milam, Wright—44.

Nays—Messrs. President, Adams, Armstrong of Jasper, Board, Brown, Bryant of Harris, Buffington, Burnett, Curtis, Evans of Titus, Flanagan, Gaston, Gray, Harris, Jordan, Kendal, Lippard, Munroe, Ruby, Slaughter, Smith, Varnell—22.

So the Convention suspended the rules.

Mr. Newcomb moved the report be recommitted to the Committee on Education.

It was so ordered.

Mr. Burnett moved a suspension of the rules to take up the resolution offered by Mr. Newcomb, repealing the resolution passed by the Convention respecting the division of the State.

The President announced the next business in order was the resolution named.

Mr. Sumner rose to the point of order that the resolution contemplating a division of the State was out of order.

Point of order not sustained.

Mr. Flanagan moved the previous question.

Previous question seconded.

Mr. Sumner moved a call of the House.

Call not sustained.

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

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

Yeas—Messrs. President, Adams, Armstrong of Lamar, Bledsoe, Board, Brown, Bryant of Harris, Buffington, Butler, Burnett, Carter, Curtis, Downing, Evans of McLennan, Evans of Titus, Fayle, Flanagan, W. Flanagan, Gaston, Gray, Hamilton of Bastrop, Harris, Harn, Jordan, Kendal, Kuechler, Lippard Mullins, Munroe, Newcomb, Patten, Ruby, Scott, Slaughter, Smith, Varnell, Whitmore, Wright—38.

Nays—Messrs. Armstrong of Jasper, Bell, Bryant of Grayson, Caldwell, Cole, Fleming, Hamilton of Travis, Horne, Johnson of Harrison, Kealy, Keigwin, Lindsay, Mackey, McCormick, McWashington, Morse, Mundine, Phillips of San Augustine, Posey, Rogers, Sorrell, Stockbridge, Sumner, Vaughan, Watrous, Williams, Wilson of Brazoria, Wilson of Milan—28.

The Convention ordered the main question.

The question recurring upon the adoption of the resolution, the yeas and nays were demanded, and resulted thus :

Yeas—Messrs. President, Adams, Armstrong of Lamar, Bledsoe, Board, Brown, Bryant of Harris, Buffington, Butler, Burnett, Carter, Curtis, Downing, Evans of McLennan, Evans of Titus, Fayle, Flanagan, W. Flanagan, Gaston, Gray, Hamilton of Bastrop, Harris, Jordan, Kendal, Kuechler, Lippard, Mullins, Munroe, Newcomb, Patten, Ruby, Scott, Slaughter, Smith, Varnell, Whitmore, Wright—37.

Nays—Messrs. Armstrong of Jasper, Bell, Caldwell, Cole, Fleming, Hamilton of Travis, Harn, Horne, Johnson of Harrison,

Kealy, Keigwin, Kirk, Lindsay, Mackey, McCormick, McWashington, Morse, Mundine, Phillips of San Augustine, Posey, Rogers, Sorrell, Stockbridge, Sumner, Vaughan, Watrous, Wilson of Brazoria, Wilson of Milam—28.

So the resolution was adopted.

Mr. Lindsay made the point of order that a rule of the Convention could not be repealed except by a two-thirds vote.

The President decided against the point of order.

Mr. McCormick moved to suspend the rules to take up a declaration respecting the Central Railroad.

Mr. Patten moved the Convention adjourn till to-morrow morning at ten o'clock.

Lost.

The question recurred upon the question of the suspension of the rules.

The Convention suspended the rules.

Mr. Hamilton, of Bastrop, moved to make the consideration of the declaration the special order of the day for Monday next at eleven o'clock A. M.

The Convention refused.

Mr. Patten moved to adjourn till to-morrow morning at ten o'clock.

Lost.

Mr. Hamilton, of Travis, moved the previous question.

Previous question seconded.

Mr. Patten moved a call of the House.

Call not sustained.

Mr. Patten moved to adjourn till to-morrow morning at ten o'clock.

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

Yeas—Messrs. President, Armstrong of Jasper, Bledsoe, Brown, Butler, Downing, Evans of McLennan, Hamilton of Bastrop, Kuechler, Lippard, Morse, Mullins, Newcomb, Patten, Pedigo, Posey, Slaughter, Vaughan, Whitmore, Williams—20.

Nays—Messrs. Adams, Armstrong of Lamar, Bell, Board, Bryant of Grayson, Bryant of Harris, Buffington, Burnett, Caldwell, Carter, Cole, Curtis, Evans of Titus, Faye, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Gray, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Jordan, Kealy, Keigwin, Kendal, Kirk, Lindsay, Mackey, McCormick, McWashington, Mundine, Munroe, Phillips of San Augustine, Rogers, Scott, Smith, Sorrell,

Stockbridge, Sumner, Varnell, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—48.

So the Convention refused to adjourn.

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

Main question ordered.

Mr. Patten moved to adjourn till this evening at eight o'clock.

Ruled out of order.

Mr. Patten moved a call of the House.

The President decided that the main question having been sustained a call of the House was out of order.

Mr. Patten appealed from the decision of the chair.

The question recurred, " Shall the decision of the Chair stand as the decision of the Convention? "

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

Yeas—Messrs. Adams, Armstrong of Jasper, Armstrong of Lamar, Bell, Board, Brown, Bryant of Grayson, Bryant of Harris, Buffington, Butler, Burnett, Caldwell, Carter, Cole, Curtis, Downing, Evans of Titus, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Gray, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Jordan, Kealy, Keigwin, Kendal, Kuechler, Kirk, Mackey, McCormick, McWashington, Morse, Mundine, Munroe, Newcomb, Pedigo, Phillips of San Augustine, Posey, Rogers, Ruby, Slaughter, Smith, Stockbridge, Sumner, Varnell, Watrous, Whitmore, Williams, Wilson of Brazoria, Wilson of Milam, Wright—58.

Nays—Messrs. Bledsoe, Evans of McLennan, Hamilton of Bastrop, Lippard, Mullins, Patten, Scott, Vaughan—8.

So the decision of the Chair was sustained.

The question recurring upon the adoption of the declaration, the yeas and nays were demanded, and resulted thus:

Yeas—Messrs. Adams, Armstrong of Lamar, Bell, Board, Brown, Bryant of Grayson, Bryant of Harris, Buffington, Burnett, Caldwell, Carter, Cole, Curtis, Downing, Evans of McLennan, Evans of Titus, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Gray, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Jordan, Kealy, Keigwin, Kendal, Kirk, Mackey, McCormick, McWashington, Morse, Mundine, Munroe, Pedigo, Phillips of San Augustine, Rogers, Ruby, Scott, Slaughter, Smith, Sorrell, Stock-

bridge, Sumner, Varnell, Watrous, Williams, Wilson of Brazoria, Wilson of Milam, Wright—55.

Nays—Messrs. President, Armstrong of Jasper, Bledsoe, Butler, Hamilton of Bastrop,, Keuchler, Lindsay, Lippard, Mullins, Newcomb, Patten, Posey, Vaughan, Whitmore—14.

So the declaration was adopted.

Mr. Evans, of McLennan, moved the vote adopting the declaration be reconsidered for the purpose of offering the following amendment :

Amend by adding after the proviso as follows :

And provided further, That the said company shall, within six months from and after the passage hereof, survey, define and mark the line of their road, for a distance of at least fifty miles above the town of Calvert, and shall thereafter keep the line of their road surveyed, defined and marked for a distance of at least fifty (50) miles in advance of running cars thereon.

And provided further, That the Governor, Comptroller and Treasurer of the State of Texas, within sixty (60) days from the passage hereof, or as soon thereafter as practicable, shall proceed to fix and arrange a tariff or rate of charges for the passage of all manner or character of freight as well as passengers, over the said Houston, Texas and Central Railroad, and when arranged shall notify the President of said road thereof; which tariff or rate of charges so fixed shall not exceed ten (10) per cent. in advance of the tariff or rate of charges of first class railroads in the United States south of Virginia; and said railroad company, shall, from and after the ratification of said tariff or rate of charges, transport over their road all freight and passengers according to the said above fixed tariff or rate of charges, and shall make said rate of charges so fixed as provided above fully known to the public by keeping the same constantly published in at least one newspaper published at each end of their road, and shall keep a printed schedule of said tariff or rate of charges posted in each running box or passenger car that they have on said road. And should said company ask, demand or receive a greater tariff or rate of charges upon freights or passengers than that so fixed as above, then said company shall forfeit five times the sum so asked, demanded or received, to be recovered by suit in any of the courts of this State having jurisdiction by the person interested.

Mr. McCormick moved to lay the motion to reconsider on the table.

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

Yeas—Messrs. Adams, Armstrong of Lamar, Bell, Board, Bryant of Harris, Buffington, Burnett, Caldwell, Carter, Cole, Curtis, Downing, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Gray, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Jordan, Kealy, Keigwin, Kendal, Kirk, Mackey, McCormick, McWashington, Mundine, Munroe, Pedigo, Phillips of San Augustine, Rogers, Smith, Stockbridge, Sumner, Varnell, Vaughan, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—46.

Nays—Messrs. President, Armstrong of Jasper, Bledsoe, Bryant of Grayson, Butler, Evans of McLennan, Hamilton of Bastrop, Keuchler, Lippard, Morse, Mullins, Newcomb, Patten, Ruby, Scott, Slaughter, Sorrell, Whitmore, Williams—19.

So the motion was laid on the table.

Mr. Patten moved the Convention adjourn till to-morrow morning at ten o'clock.

Lost.

Mr. McCormick moved a further suspension of the rules to put the resolution on its final passage.

Mr. Butler moved the Convention adjourn till to-morrow morning at ten o'clock.

Lost.

The question recurred upon the suspension of the rules.

The Convention suspended the rules.

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

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

Yeas—Messrs. President, Armstrong of Jasper, Bledsoe, Bryant of Grayson, Bryant of Harris, Burnett, Carter, Curtis, Downing, Evans of McLennan, Hamilton of Bastrop, Keuchler, Morse, Mullins, Munroe, Newcomb, Patten, Phillips of San Augustine, Ruby, Scott, Sorrell, Sumner, Whitmore, Williams—24.

Nays—Messrs. Adams, Bell, Board, Buffington, Caldwell, Cole, Fayle, Flanagan, W. Flanagan, Fleming, Gaston, Goddin, Gray, Hamilton of Travis, Harris, Harn, Horne, Johnson of Harrison, Jordan, Kealey, Kendal, Kirk, Mackey, McCormick, McWashington, Mundine, Posey, Rogers, Smith, Stockbridge, Varnell, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—35.

The Convention refused to adopt the amendment.

The question recurred upon the final passage of the declaration.

It was read third time and passed.

Mr. McCormick asked leave of absence indefinitely for Mr. Mundine.

Leave granted.

On motion the Convention adjourned till to-morrow morning at ten o'clock.
