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CAPITOL, AUSTIN, TEXAS,
February 5, 1869.

Convention met pursuant to adjournment.

Roll called.

Quorum present.

Prayer by the Chaplain.

Journal of yesterday read and adopted.

Mr. Varnell offered the following resolution :

Resolved, That this Convention do now adjourn, without day, to be reconvened, if found necessary, by the Commanding General, or the President of the Convention.

The question recurred upon the adoption of the resolution.

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

Yeas—Messrs. President, Board, Butler, Burnett, Fayle, Flanagan, Hamilton of Bastrop, Hunt, Johnson, Jordan, Kendal, Kuechler, Mullins, Newcomb, Patten, Phillips of San Augustine, Ruby, Slaughter, Smith, Varnell, Wilson of Milam—20.

Nays—Messrs. Armstrong of Lamar, Bellinger, Bryant, Buffington, Carter, Cole, Curtis, Downing, Fleming, Gaston, Glenn, Gray, Hamilton of Travis, Harris, Harn, Johnson, Kealy, Keigwin, Kirk, Leib, Lippard, Long, Mackey, McCormick, McWashington, Mills, Morse, Mundine, Posey, Rogers, Schuetze, Sorrell, Stockbridge, Talbot, Thomas, Watrous, Williams, Wilson of Brazoria, Wright—40.

Convention refused to adopt.

Mr. Hamilton moved that Mr. Long, of Limestone, be excused.

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

Yeas—Messrs. President, Armstrong of Lamar, Board, Bryant, Cole, Fayle, Flanagan, Fleming, Gaston, Glenn, Gray, Hamilton of Bastrop, Hamilton of Travis, Harris, Harn, Hunt, Johnson, Jordan, Kealy, Keigwin, Kirk, Lippard, Mackey, McCormick, McWashington, Mullins, Mundine, Patten, Phillips of San Augustine, Posey, Rogers, Ruby, Scott, Slaughter, Smith, Sorrell,

Stockbridge, Thomas, Williams, Wilson of Brazoria, Wilson of Milam, Wright—42.

Nays—Messrs. Bellinger, Buffington, Butler, Burnett, Carter, Curtis, Downing, Kendal, Kuechler, Leib, Mills, Morse, Newcomb, Schuetze, Talbot, Varnell, Watrous—19.

Leave granted.

Mr. Patten asked leave of absence for Messrs. Downing, Smith and Slaughter.

Leave granted.

Mr. Butler moved to take up the declaration submitting the constitution to the people.

Mr. Burnett moved the previous question.

Previous question seconded.

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

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

Yeas—Messrs. President, Armstrong of Jasper, Board, Butler, Burnett, Carter, Cole, Curtis, Downing, Evans of Titus, Fayle, Flanagan, Gaston, Glenn, Gray, Hamilton of Bastrop, Hamilton of Travis, Harris, Harn, Hunt, Johnson, Jordan, Kealy, Keigwin, Kendal, Kuechler, Kirk, Leib, Lippard, Long, Mackey, McWashington, Morse, Mullins, Newcomb, Patten, Phillips of San Augustine, Posey, Rogers, Ruby, Slaughter, Sorrell, Talbot, Varnell, Watrous, Wilson of Brazoria, Wilson of Milam, Wright—49.

Nays—Messrs. Armstrong of Lamar, Bellinger, Bryant, Buffington, Fleming, McCormick, Mills, Mundine, Schuetze, Scott, Smith, Stockbridge, Williams—13.

So the Convention ordered the main question.

The question recurred upon the adoption of the declaration.

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

Yeas—Messrs. Armstrong of Jasper, Armstrong of Lamar, Bellinger, Bryant, Buffington, Burnett, Carter, Cole, Curtis, Fayle, Fleming, Gaston, Glenn, Gray, Hamilton of Travis, Harris, Harn, Johnson, Kealy, Keigwin, Kendal, Kuechler, Kirk, Leib, Lippard, Mackey, McCormick, McWashington, Morse, Mundine, Newcomb, Phillips of San Augustine, Posey, Rogers, Scott, Sorrell, Stockbridge, Talbot, Thomas, Watrous, Wilson of Brazoria, Wright—42.

Nays—Messrs. President, Board, Butler, Downing, Flanagan, Hamilton of Bastrop, Hunt, Jordan, Mills, Patten, Ruby, Slaughter, Smith, Williams, Wilson of Milam—15.

So the declaration was adopted.

Mr. Smith introduced the following protest.

HALL OF THE CONVENTION,
Austin, February 4, 1869.

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

SIR : We, the undersigned, delegates to the Constitutional Convention of the State of Texas, do hereby express disapproval of the proposed constitution adopted by a majority of this Convention.

We object to it, because it is based upon the unwarranted assumption that the constitution of the United States, with the treaties and laws made in pursuance thereof, and the accepted constitution of the State of Texas (of 1845), have not been continuously the supreme law of the land. Believing as we do, that all pretended laws and judicial decisions made within the national limits, and not authorized by and subordinate to the government of the United States, were from the beginning and must remain null and void, and the undersigned will never compromise this principle for any supposed policy.

We do most earnestly and solemnly protest against that provision in the proposed constitution which extends the right of suffrage to all those who voluntarily became the public enemy of the United States, feeling assured that it was the aim of Congress to enable the loyal people of the State of Texas, without regard to any distinction of race or color, to reorganize and maintain a government in the place of that overthrown by the rebellion, and we cannot forbear to express the conviction that the adoption by the majority of the Convention of the provision in regard to suffrage was obtained by virtue of a premeditated and deliberate deception, and by methods of intimidation, which deserve the gravest censure. The majority of the Convention have deliberately removed from the constitution every safeguard for the protection of the loyal voter, white and black. They have stricken from that instrument the whole system of registry; they have repudiated the oath of loyalty contained in the reconstruction laws; they have spurned the test of equal, civil and political rights, and we do most solemnly call upon the registered

voters of Texas to vindicate the national honor, and the cause of right and of justice, by their votes.

M. C. HAMILTON,
 Delegate from Bastrop.
 JAMES P. BUTLER,
 Delegate from Walker.
 H. C. HUNT,
 Delegate representing Comal, Blanco and Hays counties.
 GEO. H. SLAUGHTER,
 Delegate from Smith County.
 JAMES BROWN,
 Kaufman, Van Zandt.
 ANDREW DOWNING,
 Of Bosque County.
 JAMES P. NEWCOMB,
 Delegate from Bexar County.
 JOHN H. LIPPARD,
 Freestone County.
 S. MULLINS,
 McLennan County.

I subscribe to the foregoing, because I believe that many of the members were gulled, and did not understand what they were doing, and also because there were a great many absent when the vote was taken.

N. M. BOARD,
 Harrison county.
 JACOB KUECHLER,
 Delegate from Gillespie, Kendall, Llano, Mason, Kimble, San Saba,
 Menard.
 NATHAN PATTEN,
 McLennan County.
 J. H. WILSON,
 Milam County.

I sign this protest for the above reasons, and because I firmly believe that the adoption of the Constitution will be the first step towards a general disfranchisement of the colored race.

E. DEGENER,
 Bexar County and District.
 ROBERT K. SMITH,
 Galveston and Harris District.

I join in the above protest, except only that part which charges deception and intimidation on the part of members.

EDMUND J. DAVIS,
 Delegate from Nueces, etc.
 RALPH LONG,
 Limestone County.

I sign this protest for all of the above reasons, believing that the right, not only of loyal blacks and whites are imperiled, but that the expressed will of Congress has been ignored.

G. T. RUBY,
 Galveston County.
 W. JOHNSON,
 Of Marshall.

I was under the impression that I voted for a substitute that included the future, not the past. I protest against the past.

B. F. WILLIAMS.

I join the above protest, excepting the part which charges deception and intimidation on the part of the members.

A. P. H. JORDAN.

I join in this protest so far as it has reference to the suffrage question, and disclaiming any charge of fraud on the part of the mover of the substitute.

W. FRANK CARTER,
 Parker County.

Mr. Hamilton, of Travis, moved a suspension of the rules to consider the following

RESOLUTION.

Resolved, That the Engrossing Clerk be authorized to employ such assistance as may be necessary to enable him to complete the engrossing the work before him, and that each of his assistants be entitled to four dollars per diem for their services.

Rules suspended.

The question recurred upon the adoption of the resolution.

It was adopted.

Rules further suspended.

Resolution read a third time and passed.

Mr. Evans, from the special committee appointed January 23, 1869, to inquire into the circumstances related in the protest of Mr. Hamilton, of Travis, with regard to the expulsion of Mr. F. W. Sumner, reported as follows:

REPRESENTATIVE HALL,
Austin, Texas, February 5, 1869.

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

SIR: The special committee appointed to consider the circumstances related in the protest of Mr. Hamilton, of Travis, concerning the expulsion of Mr. Sumner have considered the same and make the following report:

The protestants, in their relation of the circumstances concerning the expulsion of Mr. Sumner, have suppressed the material facts and misrepresented the action of the President and the Convention in every important particular. They say:

“We deliberately affirm that the following is a true statement of the facts as they actually existed and transpired: The previous question on the adoption of the resolutions reported by the committee of the whole Convention in reference to a division of the State, and sending commissioners to Washington, etc., having been seconded, and a motion to lay on the table negatived, a motion for a call of the Convention was made, and being sustained by the requisite number, the President ordered the proper officer of the Convention to close the doors, and the Secretary to call the roll of the Convention, which was accordingly done, and the Secretary announced the absentees, Mr. Slaughter and Mr. Sumner. After which Mr. Degener, of Bexar, addressed the President and moved that Mr. Sumner be expelled.”

So far from this statement being true, the most material fact as known to even the whole Convention is suppressed.

As stated in the protest, it is true the motion to lay the previous question on the table was negatived and a motion for a call of the Convention was made, but the protest suppresses the fact that Mr. Sumner hurriedly withdrew from the hall of the Convention, after the previous question had been negatived, and before the call of the House could be seconded and the doors closed.

The withdrawal of Mr. Sumner contumaciously to prevent, by his absence, a vote, knowing that the call would be sustained, was patent to the Convention and known to every member who signed the pro-

test, and would not be denied or controverted by any man who has regard for truth. But the protestants say :

“We deliberately and solemnly affirm, that when Mr. Sumner retired from the hall of the Convention there was no order of the Convention or rule thereof forbidding him to do so, or making it improper in the smallest degree for him or any other member of the Convention to retire from the hall of the Convention without leave, and that when the call of the Convention had been made, and up to the time that Mr. Sumner's expulsion was announced, there was not the slightest evidence produced that he had any knowledge that the call was pending.”

It is very surprising that party feeling should cause so many honorable gentlemen to make this statement.

By rule thirty-six “no member shall absent himself from the sittings of the Convention without leave unless in case of sickness.”

Now, that Mr. Sumner absented himself in contempt of this rule cannot be denied. No one pretends that he was sick or absented himself for any other purpose than to prevent action of the Convention.

By the rules of the Convention, upon a call of the Convention, if there be absentees, “the sergeant-at-arms or a special messenger may be sent for them, and the question pending shall be without a motion laid on the table until such of the absentees as have been in attendance on the Convention, within five days next preceding the day on which the call is made, shall appear or the call be suspended.”

Mr. Sumner had been one of some fifteen or more members who had persistently for more than six weeks kept up the call of the House under the pretense of compelling the attendance of absent members, and at last when every member of the Convention, required by the rule, was present, he made himself an absentee in order that his associates might continue the call.

By the rules of the Convention fifty-five and sixty-seven, any fifteen members may sustain a call of the Convention, and with the concurrence of the President compel the attendance of the absent members.

These rules were made for the protection of the Convention and the maintenance of the rights of the majority. Surely no fair minded man will pretend that these rules were made to enable a minority of fifteen to send a member out and thus defeat the action of the Convention.

Fifteen members had a right to compel the attendance of Mr. Sumner, but not the right to secrete him so that the sergeant-at-arms could not find him.

The protestants say :

"Nor was there any reasonable evidence that he was eluding the sergeant-at-arms or special messenger, but without waiting sufficient time for the sergeant-at-arms to make the most hasty and casual inquiry for Mr. Sumner in the city, or for Mr. Sumner himself to return after the conclusion of any ordinary engagement that might have called him from the hall; without one particle of proof further than the fact that he was then absent, but had not been absent more than an hour; cutting off all argument by the previous question, in a transport of frenzy the vote was taken, and with equal recklessness the President declared that the concurrence of a bare majority was sufficient to expel."

They furnish in this another lamentable evidence of the injustice and blinding effects of party spirit.

It was in proof before the Convention that the sergeant-at-arms and three messengers were dispatched immediately upon the call of the House, and they made the most diligent pursuit, looking for him at every point where he could hide himself; and it is a perplexing mystery now to the sergeant-at-arms how his agility eluded them.

The committee examined many witnesses to ascertain his hiding place. The nearest they came at this was from the taunt of Mr. Sumner himself to the sergeant-at-arms, that "You could not find me when searching for me; had you come to Mr. Phillips' you might have found me." And that he was secreted at the house of Mr. Phillips is not improbable. One of the members of the committee stated that Mr. Sumner had informed him that he was there.

The committee summoned Mr. Phillips to testify, who declined to appear, and as they did not deem it important he was not compelled, there being no pretense that Mr. Sumner had not secreted himself to elude the sergeant-at-arms.

Mr. Sumner for weeks was conspicuous in persisting to keep up the "call of the House," to prevent all action by the Convention. On one occasion, a few days before his expulsion, he, in combination with some fifteen others, attempted to break the quorum of the House by refusing to vote, in violation of rule sixty, which says: "every member who shall be in the Convention when a question is put shall give his vote, unless the Convention for special reasons shall excuse him."

And again, after the "call of the House" was seconded, he attempted to force his way out before the doors were closed, and reached the door as the sergeant-at-arms was closing it; he drew his cane on the sergeant-at-arms in a menacing attitude, saying "damn you, I will kill you if you undertake to stop me."

It was due to our own respect as well as to the country that the business of this Convention should not have longer been delayed by

the action of this contumacious member, and every right thinking man cannot but concede that it was just and proper that he should have been dropped from the roll, so that the Convention might proceed, as it has done, to the completion of the constitution.

The only doubt suggested by any friend of speedy reconstruction was as to the competency of the majority to effect his expulsion. This doubt arises from the fact that the national Congress and the several State Legislatures are restricted by positive law from expelling a member by less than a two-thirds vote.

But this Convention, not being restricted by any such positive law, the act of the majority is the act of the Convention in all cases except where it has imposed on itself a contrary law.

All of which is respectfully submitted, with the testimony before the committee, and ask to be discharged from further consideration of the resolution.

L. D. EVANS, Chairman,
J. H. WILSON,
ANDREW DOWNING.

Mr. Harn introduced the following declaration :

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

1. That the following loyal newspapers are hereby selected to publish for distribution, amongst the registered voters of this State, the constitution as framed by this Convention, together with all the resolutions and declarations as passed by this Convention. The Houston Union shall publish five thousand copies for distribution in the counties of Galveston, Brazoria, Fort Bend, Harris, Austin, Montgomery, Walker, Madison, Grimes, Brazos, Washington, Leon, Freestone, Limestone, Falls, McLennan, Matagorda, Wharton, Hill, Bosque, Navarro, Jasper, Jefferson, Liberty, Chambers, Houston, Trinity, Hardin, Tyler, Orange, Newton.

The Austin Republican shall publish five thousand copies for distribution in the counties of Colorado, Fayette, Lavaca, Bastrop, Travis, Williamson, Bell, Hamilton, Comanche, Brown, San Saba, Lampasas, Burnett, Llano, Hays, Caldwell, Guadalupe, Burleson, Milam, Robertson, Polk, Hunt, Collin, Dallas, Tarrant, Cook, Denton, Montague, Wise, Parker, Palo Pinto, Jack, Clay, Young, Johnson, Ellis, Erath, Hood and Taylor.

The Tyler Index shall publish five thousand copies for distribution in the counties of Anderson, Angelina, Cherokee, Harrison, Henderson, Rusk, Sabine, San Augustine, Shelby, Smith, Davis,

Bowie, Titus, Red River, Lamar, Hopkins, Nacogdoches, Panola, Van Zandt and Wood.

The San Antonio Express shall publish five thousand copies for distribution in the counties of Jackson, Mason, Menard, Kendall, Edwards, Kerr, Gillespie, Blanco, Bandera, Comal, Bexar, Wilson, Gonzales, DeWitt, Karnes, Victoria, Goliad, Calhoun, Refugio, San Patricio, Nueces, Live Oak, Bell, Atascosa, Medina, Zavala, Cameron, Hidalgo, Starr, Zapata, Webb, Kinney, Presidio, Maverick, Coryell, El Paso, Kaufman, Fannin and Grayson.

The San Antonio German "Freie Presse" shall publish six thousand copies for distribution amongst the registered voters in this State of German descent, wherever located; provided, that the publication be in pamphlet form.

2. *Be it further declared*, That the Committee on Style shall remain in session, after the adjournment of this Convention, for the purpose of compiling the constitution, resolutions and declarations, as passed by this Convention, superintend the copying and proper transmittal of the same to the respective owners of the aforementioned newspapers. The members of the Committee on Style, so retained, shall receive their per diem pay as heretofore :

Provided, That said extension of session shall not exceed twenty-five days.

3. *Be it further declared*, That the enrolling clerk of this Convention shall be retained and shall act as secretary for the Committee on Style, and hire such assistants as may be necessary for the speedy copying of all enrolled provisions, for revisal by the committee and transmittal to the owners of the before mentioned newspapers. The "per diem" pay of the enrolling clerk shall be as heretofore, and the sum of two hundred and fifty dollars, or as much thereof as may be necessary, out of the contingent fund of this Convention, is hereby appropriated to defray the expenses for the hire of the assistants, as herein before mentioned.

Provided, That the enrolling clerk shall not be retained for a longer period than twenty-five days.

4. *Be it further declared*, That the sum of ——— dollars, or so much thereof as may be necessary, out of any moneys in the treasury belonging to this Convention, is hereby appropriated for the purpose of defraying the expenses of the publication of the constitution, resolutions and declarations, herein provided for.

5. *Be it further declared*, That the certificate of the Secretary (who is hereby retained upon his per diem until this work is complete) and the approval of the Chairman of the Committee on Style (during the absence of the President of this Convention) shall be a sufficient voucher for the Comptroller to draw his warrant upon the Treasurer in furtherance of the payment of all expenses accrued under the provisions of this declaration.

Ruled out of order.

Mr. Patten moved to lay the original report on publication of journals, and substitute thereto, on the table.

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

Yeas—Messrs. President, Armstrong of Jasper, Board, Bryant, Butler, Burnett, Carter, Downing, Evans of Titus, Flanagan, Fayle, Hamilton of Bastrop, Hunt, Jordan, Kuechler, Long, Newcomb, Patten, Ruby, Slaughter, Smith, Thomas, Varnell, Wilson of Milam—25.

Nays—Messrs. Armstrong of Lamar, Bellinger, Buffington, Cole, Fleming, Gaston, Glenn, Gray, Hamilton of Travis, Harris, Harn, Kealy, Keigwin, Kirk, Leib, Mackey, McCormick, McWashington, Morse, Mullins, Mundine, Phillips of San Augustine, Posey, Rogers, Schutze, Scott, Sorrell, Stockbridge, Talbot, Watrous, Wilson of Brazoria, Wright—33.

So the Convention refused to lay on the table.

The question recurred upon the adoption of the substitute.

The yeas and nays were demanded and resulted thus :

Yeas—Messrs. Armstrong of Lamar, Bellinger, Bryant, Buffington, Cole, Curtis, Fleming, Gaston, Glenn, Gray, Hamilton of Travis, Harris, Harn, Kealy, Keigwin, Kirk, Mackey, McCormick, McWashington, Mills, Morse, Mundine, Phillips of San Augustine, Posey, Rogers, Schuetze, Scott, Sorrell, Stockbridge, Talbot, Watrous, Williams, Wilson of Brazoria, Wright—34.

Nays—Messrs. President, Armstrong of Jasper, Board, Butler, Burnett, Carter, Downing, Evans of Titus, Fayle, Flanagan, Hamilton of Bastrop, Hunt, Jordan, Kendal, Kuechler, Leib, Lippard, Long, Mullins, Newcomb, Patten, Ruby, Slaughter, Smith, Thomas, Varnell, Wilson of Milam—27.

So the Convention adopted the substitute.

Mr. Butler offered the substitute of Mr. Harn for the substitute.

Mr. Hamilton of Travis moved the previous question.

Previous question withdrawn.

The President declared the Convention adjourned till the usual hour this evening.

EVENING SESSION—HALF-PAST SEVEN O'CLOCK.

Convention met pursuant to adjournment.

Roll called.

A quorum not being present, forty-four only answering to their names.

Mr. Mundine moved a call of the House.

Call sustained.

Upon calling the roll a quorum answered.

The President directed the following letter to be read from the Commanding General:

HEADQUARTERS FIFTH MILITARY DISTRICT,
State of Texas,
Austin, February 5, 1869.

Hon. E. J. DAVIS,

President of the Convention:

SIR: In reply to your inquiry I have the honor to state the printing of the Constitution framed by the Convention, and of the ordinance submitting it to the registered voters of the State for ratification, is regarded as coming within the province of the district commander, and will be provided for if the Convention should not otherwise provide.

Very respectfully, sir,

Your obedient servant,

E. R. S. CANBY,

Brevet Major General Commanding.

Mr. Mills, occupying the floor, was called to order by Mr. Evans, of Titus, for language disrespectful to the President, and requested to take his seat, by the President.

Mr. Mills failing to take his seat was ordered into custody of the sergeant-at-arms by the President.

Mr. Armstrong, of Lamar, made the point of order, that the

President could not order Mr. Mills under the custody of the sergeant-at-arms without the authority of the Convention.

The President decided adversely.

Mr. Hamilton, of Travis, raised the point of order that Mr. Mills was entitled to the privilege of making an explanation of his remarks.

Mr. Williams, of Colorado, tendered his resignation as a member of the Convention.

Mr. Hamilton again rose to the point of order that Mr. Mills was entitled to explain.

Mr. Ruby, of Galveston, tendered his resignation by the following letter :

To the Hon. E. J. DAVIS,
President of Reconstruction Convention :
State of Texas.

SIR: Believing that the present Reconstruction Convention has lost, through many of its members, all regard for dignity and honor as a legislative assemblage, and that its continued session will only terminate in disgrace to the entire country, I herewith tender my resignation as a member hereof and as delegate from the county of Galveston.

G. T. RUBY,
Delegate from Galveston county.
Convention Hall, night, February 5, 1869.

The Convention adjourned.