

THURSDAY MORNING, August 7, 1845.

The Convention met pursuant to adjournment—prayer by the Chaplain.

Present—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochil-tree, Van Zandt, White, Wright and Young.

The journal of yesterday was read and adopted.

Mr. Scott filed the following protest, which was ordered to be spread upon the journals, as follows :

The undersigned, having voted in the minority on the adoption of the section of the General Provisions, authorizing the Legislature to set apart for debtors, free from forced sale, (besides other property) two hundred acres of land, including the homestead, or lots not exceeding \$2,006 in value, begs leave to file this his protest against the passage of the same, and have it entered upon the journals.

The undersigned thinks he is as much under the influence of feelings of humanity, as most of those in this body who have the welfare of the unfortunate apparently so dear to them. Such motives he respects ; and when the truly unfortunate debtor can be protected by law, he deems it the sacred duty of the law-giver to extend such protection—provided more good than evil is effected thereby. The legislator must deal in general rules, not make special laws for individual cases ; and if the result of any such general laws will most probably be the promotion of evil rather than the attainment of good, every honest law-giver in duty bound to avoid such laws : if he does not act thus, he betrays his trust to God and to his country.

The strong probability is, that the Legislature will go in favor of the debtor, the full extent of the authority granted by this section : no one can doubt this, who is in the least degree familiar with the course of our legislation for the last six or eight years. Every law affecting the relation of debtor and creditor has, during

that time, went to favor and protect the former. The creditor who has trusted his hard earned substance to the honesty and integrity of his fellow, relying upon the law for the protection of his rights, when he asks for admission at the temple of justice, is spurned from its portals with the stern reply—"Begone, you unfeeling wretch, you deserve no aid!" No matter what arts have been used, not criminal by law; no matter what principle of morality has been violated by the debtor, in the attainment of his creditor's substance, when the latter seeks his rights, all our laws speak to him in terms of rebuke. The man who is thus deprived of his substance by art, fraud, and cunning, is as much aggrieved, as if his property had been feloniously taken from him. The man who steals my property acquires no title thereby, and is condemned by the law; the man who obtains it by falsehood and cunning, acquires a title, and has the sympathy and countenance of the law. Should the mere means of obtaining the same end, cause such an immense difference in its results? The undersigned thinks it should not, and takes this method of publicly avowing his opinion. There are, no doubt, cases in which the misfortunes of a debtor may render him unable to pay his debts in money or in property; but the undersigned, from his experience and observation, is satisfied that in a large majority of instances, the honest debtor can either pay his debts in money or property, or have the sympathy of his creditor, if he wills to do so: this is unquestionably the case in nearly every instance where the debtor has acted with honesty, industry and economy. It is the duty of the law-giver to promote the growth of these last named virtues; and it is consequently a breach of duty to do any thing which, in its consequences, may retard or strangle that growth.

The 200 acres to be exempt from sale, may be worth a very large amount, and still be exempt: the means that an honest debtor should apply to the payment of his debts, may be applied by a dishonest one, to improving this land, rearing manufacturing establishments, buildings for rent, and in many other ways, until it may amount to a princely fortune. Then, will not this seccion, in all probability, hold out a strong temptation to dishonesty? The undersigned thinks it will; and his observation leads him to believe that many persons in this State, will most vilely abuse this most beneficent provision; and he ventures to predict, that three dishonest debtors to one honest and unfortunate one, will be benefitted by it; and as such, he solemnly protests against its passage.

All human action is impelled by rewards and punishments.—

The laws cannot reward good actions, but they can and should punish bad ones—not reward them. As a general rule, it is bad conduct in a member of society to violate his fair contract; and when he does so, his conduct should be frowned upon. Let the law exempt no species of property from forced sale, while an honest debt remains unpaid; let the fact of failure to pay be *prima facie* evidence of fraud and dishonesty in a debtor; let the creditor have the power to arrest and detain his person, until all his estate is surrendered for the satisfaction of his debts, and you will hold over the debtor a powerful inducement for honesty of action; and you will take from him a powerful one to a contrary course, as at present held out by our laws. It is admitted, that an honest and unfortunate debtor may occasionally be unjustly arrested and detained, but it should be borne in mind, that such cases would be but few; and the undersigned thinks that the amount of good that would result by this check to dishonest conduct, would far outweigh the evil caused to the honest and unfortunate debtor. Sincerely entertaining this opinion, the undersigned voted against that clause in the "Bill of Rights," exempting from imprisonment the person of a debtor; and he still thinks that the language of the law should be to the debtor—"pay your just debts, or give up all your means of doing so, and your person and future acquisition shall be exempt from your creditors." Let the laws speak thus, and much of the fraud, cunning and duplicity that stalks abroad among us, insomuch that the name of Texas has almost become, in other countries, a by-word and term of reproach, will disappear; and man, purified and regenerated, will harmonize in some degree with the works of nature, in this beautiful and fairy land.

But it is said that the credit system is an evil, and that our laws are calculated and designed to overthrow it. The undersigned, dissenting from the premises, freely admits the conclusion; but at the same time he must be permitted to say, that it is more manly in the law-giver to strike openly and boldly at the evil; and not in a covert, insidious and ineffectual manner—a manner that does not eradicate the evil, but lays open the door to an immense amount of fraud and dishonesty. Let the law-maker, if he wishes it, not to make the debtor, by acting dishonestly, the means of overturning that system; but let him preserve the morals of the community, and by some other means effect the desired end. It should not escape our recollection, that the instrument we are framing, will attract the gaze of most civilized and enlightened nations; that it has to pass the ordeal of that austere and intelligent body, the United States' Congress; and that it has

been with much difficulty, that our friends there have successfully supported our cause. It should also be recollected that our Legislature, unrestricted by us, would have full power to act upon this and all such subjects. Is it not, then, unwise and impolitic to incorporate in our fundamental law, a provision (whatever may be its humanity) somewhat novel in its character—unknown to other kindred instruments; and one which, upon its very face, bears the impress of insolvency and bad faith?

JAMES SCOTT.

Mr. Lipscomb offered the following resolution:

*Resolved*, That the President of the Convention be authorized to appoint some person, to record the Journals and proceedings of the Convention in a bound book; and when completed, to deposit the same in the office of the Secretary of State; and that the person so appointed, shall receive such compensation as is usually given for recording,—the same to be paid out of the appropriation to defray the expenses of the Convention.

Laid on the table one day for consideration.

On motion of Mr. Parker, the Convention took up the

#### ORDERS OF THE DAY.

The report of the committee on General Provisions being first in order, was taken up.

Mr. Gage offered the following as an additional section, to come in after the 28th section:

“The Legislature shall provide by law, for exempting from taxation two hundred and fifty dollars worth of the household furniture, or other property, belonging to each family in this State.”

Which was, on motion of Mr. Young, laid on the table.

Mr. Lipscomb offered the following as an additional section, to come in after the 30th section:

“No private corporation shall be created, unless the bill creating it shall be passed by two-thirds of both houses of the Legislature.”

Mr. Rusk offered the following amendment to the additional section, which was accepted by Mr. Lipscomb:

“And two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise.”

On motion of Mr. Rusk, the additional section, as offered by Mr. Lipscomb, was laid on the table for the present.

On motion of Mr. Rusk, the vote adopting the 29th section was re-considered.

Mr. Rusk then moved to strike out the 29th section.

Upon which the ayes and noes were called, and are as follows

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—51.

Noes—Messrs. Bache, Brashear and Evans—3.

So the section was stricken out.

On motion of Mr. Rusk, the vote adopting the 30th section was re-considered; and, on his motion, the section was stricken out.

Mr. Caldwell moved to re-consider the vote adopting the 28th section, for the purpose of offering the following as a substitute for the said section:

“No corporate body shall hereafter be created, renewed, or extended, with banking or discounting privileges, except by the consent of two-thirds of the Legislature; and the act of incorporation shall not take effect, until the same be approved by two-thirds of the first Legislature returned by a general election, after the passage of the act.”

The ayes and noes being called, on the re-consideration, were as follows:

Ayes—Messrs. Caldwell, Cazneau, Evans, Hicks, Hogg, Kinney, Love, Lumpkin, McGowan, Navarro, Power, Runnels and White—13.

Noes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Howard, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lewis, Lusk, Lipscomb, McNeill, Miller, Moore, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Young—43.

So the motion was lost.

The additional section, offered by Mr. Lipscomb, was then taken up.

Mr. Brown offered the following amendment, which was accepted:

“The State shall not be a part owner of the stock or property belonging to any corporation.”

The additional section was then adopted.

Mr. Runnels offered the following as an additional section, to come in after the 6th section :

“The Legislature shall provide by law, the compensation of all officers, servants, agents, and public contractors, not provided by this Constitution, who are to be paid from the treasury of the State ; and shall not grant extra compensation to any such officer, servant, agent, or public contractor, after such public service shall have been performed, or contract entered into for the performance of the same ; nor grant by appropriation, or otherwise, any amount of money out of the treasury of the State, to any individual, on a claim real or pretended, when the same shall not have been provided for by pre-existing law.”

Which was adopted.

Mr. Evans offered the following as an additional section, to come in after the 28th section :

“The Legislature shall prohibit the issuing or circulating of printed, engraved, or lithographed bills, or other paper intended to circulate as money.”

Mr. Hogg offered, as a substitute for Mr. Evans' additional section, the following :

“If any person or persons shall be guilty of tendering or passing the promissory note or notes of an individual or individuals, as money, to pass or circulate as money in lieu of gold or silver, as a circulating medium, shall be fined and imprisoned, as may be directed by law.” Rejected.

Mr. Rusk offered, as a substitute for Mr. Evans' additional section, the following :

“The Legislature shall have power to pass laws for prohibiting, in this State, the issuance or circulation of all individual, company or corporation notes as money.” Adopted.

The question was then taken on the substitute, which was adopted as an additional section.

On motion of Mr. Love, the vote just taken, adopting the substitute offered by Mr. Rusk, as an additional section, was re-considered ; and, on motion of Mr. Rusk, the substitute and the additional section offered by Mr. Evans, were referred to the committee on General Provisions.

In 31st section, Mr. Brown moved to strike out all after the word “insurrections,” in 3d line.

Upon which the ayes and noes were called, and are as follows :

**Ayes**—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Brown, Caldwell, Clark, Cunningham, Cuney, Davis, Evans, Forbes, Gage, Hemphill, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Moore, Navarro, Parker, Power, Scott, Smyth, Standefer, Tarrant and Young—42.

**Noes**—Messrs. Baylor, Burroughs, Cazneau, Darnell, Henderson, Kinney, McNeill, Rains, Runnels, Ochiltree, Van Zandt and White—12.

Carried.

Mr. Ochiltree offered the following substitute for the 31st section:

“The Legislature of this State shall be forever inhibited from pledging the faith of the State; for the purpose of procuring any amount of money by loan.”

Mr. Lewis offered the following substitute for Mr. Ochiltree’s substitute, which was accepted:

“No money shall ever be borrowed on the faith of the State.”

Mr. Forbes moved to amend by inserting the following, after the word “insurrections,” in 31st section:

“But in no case shall any amount be borrowed, except by a vote of two-thirds of both Houses of the Legislature.”

Mr. Young moved the previous question.

The question—Shall the main question be now taken? was put.

Upon which the ayes and noes were called, and stood as follows:

**Ayes**—Messrs. President Rusk, Armstrong of R., Bagby, Burroughs, Clark, Cunningham, Hemphill, Henderson, Horton, Holland, Irion, Jewett, Kinney, Latimer of R. R., Lumpkin, McNeill, Navarro, Van Zandt and Young—19.

**Noes**—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brashear, Caldwell, Cazneau, Cuney, Darnell, Davis, Evans, Forbes, Gage, Hogg, Howard, Hunter, Lewis, Love, Lusk, Lipscomb, McGowan, Miller, Moore, Parker, Power, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and White—32.

So the motion was lost.

The ayes and noes were then called on Mr. Forbes’ amendment, and stood thus:

**Ayes**—Messrs. President Rusk, Armstrong of R., Bagby, Brown, Caldwell, Cazneau, Cunningham, Davis, Evans, Forbes, Gage, Horton, Irion, Jewett, Kinney, Love, Lumpkin, Lipscomb, Mc-

Gowan, Miller, Parker, Rains, Scott, Smyth, Standefer, White and Young—27.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brashear, Burroughs, Clark, Cuney, Darnell, Hemphill, Henderson, Hogg, Howard, Holland, Hunter, Latimer of R. R., Lewis, Lusk, McNeill, Moore, Navarro, Power, Runnels, Tarrant, Ochiltree and Van Zandt—26.

So the amendment was adopted.

On motion of Mr. Hemphill, the Convention adjourned until half past 8 o'clock to-morrow morning.

FRIDAY MORNING, Aug. 8, 1845.

The Convention met pursuant to adjournment—prayer by the Chaplain.

Present—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young.

The journal of the preceding day was read and adopted.

The committee on General Provisions, Isaac Van Zandt chairman, made the following report, which was laid on the table to come up among the orders of the day :

COMMITTEE ROOM, August 8, 1845.

*To the Hon. THOS. J. RUSK,*

*President of the Convention :*

The committee on General Provisions have had under consideration, two resolutions which were referred to them, on the subject of slaves. After mature deliberation, they have instructed me to submit the following, as a substitute for both, and respectfully recommend its adoption.

ISAAC VAN ZANDT,  
Chairman of the Committee.



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