A bill for the relief of Joseph Thompson, with report of the committee, was taken up and read second time.

Mr. Navarro moved to recommend the bill to committee on Private Land Claims. Lost; and the bill ordered to be engrossed by the following vote:


Mr. Haynes moved that the rule be suspended, and the bill read third time. Lost.

Mr. Davis of Hays, by permission, offered the following resolution:

Resolved, That all claims referred to the committee on Private Land Claims, the evidence shall be taken by interrogatories at the expense of the applicant, and they shall be filed with the report of the committee, and the said committee shall cross all such interrogatories.

On motion of Mr. Martin, the resolution was referred to the committee on Private Land Claims.

A bill for the relief of Chas. A. Russell, county surveyor of Karnes county, with report of the committee, was taken up.

Mr. Barnard moved to lay the report on the table.

On motion, the House adjourned till 10 o'clock, Monday morning, pending Mr. Barnard's motion.

House of Representatives, 1
Austin, Monday, Nov. 21st, 1859 1

House met pursuant to adjournment—roll called—quorum present—journal of Saturday read and adopted.

Mr. Short presented the petition of the citizens of Shelbyville, Referred to committee on State Affairs.
On motion of Mr. Dennis, the bill to amend an act to encourage the building of steamboats and other vessels in the State of Texas, was taken up and referred to the committee on State Affairs.

Mr. Mabry, chairman of the committee on Enrolled Bills, reported correctly enrolled and properly signed an act to regulate public printing, and had presented the same to the Governor for his approval and signature.

Mr. Branch, one of the committee on Enrolled Bills, reported correctly enrolled and properly signed an act making an appropriation for the mileage and per diem pay of the members and officers of the 8th Legislature, and that the same had been, on the 19th inst., presented to the Governor for his signature and approval.

Mr. Foscue, one of the committee on State Affairs, reported a bill to incorporate the Texas Masonic Institute, and recommended its passage. Bill read first time.

Mr. Hubbard, chairman of committee on Slaves and Slavery, reported as follows:

(Not given in by Clerk.)

Mr. Mabry, one of the committee on the Judiciary, reported, recommending the passage of the bill to provide for the payment of costs in cases of change of venue.

A message was received from the Senate, informing the House that the Senate had passed the House’s bill to amend an act supplemental to an act to authorize the location, sale and settlement of the Mississippi and Pacific Railroad Reserve, approved Nov. 28th, ’57. Also, had passed a bill validating certain surveys in Fisher & Miller’s, and Peter’s Colonies. Also had passed a bill supplementary to and amendatory of an act entitled an act to provide relief for pre-emption settlers and their assignees under the act of Jan. 22d, ’45, the act of Feb. 7th, ’53, and the act of Feb. 13th, ’54, and actual settlers in the Mississippi and Pacific Railroad Reservation.

Mr. Short, one of the committee on the Judiciary, reported a substitute for the bill to repeal the Bankrupt law, and recommended its passage.

Mr. Foscue, chairman of committee on Internal Improvements, reported a substitute for the bill to repeal the 17th sec. of an act to regulate Railroad Companies, approved Feb. 7th, 1853, and recommended its passage.

Mr. Dale, chairman of committee on Printing, reported the resolution relative having the special report of the State Engineer upon the Southern Pacific Railroad back to the House.
and asked that it be referred to the committee on Internal Improvements.

Mr. Pirkey, one of the Judiciary committee, reported, recommending the passage of the bill to amend the act to incorporate the city of San Antonio, approved July 17th, '56.

Mr. Craig, chairman, on part of the House, of the joint committee on the Court of Claims, reported, recommending the passage of the joint resolution for the relief of 4 clerks in the Comptroller's office.

Mr. Dougherty, one of the committee on the Judiciary, reported, recommending the rejection of a bill to amend the 2nd chapter, art. 549, in the Code of Criminal Procedure.

Mr. Buckley, chairman of the Judiciary committee, reported, recommending the passage of a bill regulating public sales in the county of Bastrop.

Also reported as follows, on the resolution requiring Judiciary committee to report upon the constitutionality of electing a U. S. Senator from one of the members of the Legislature:

**Committee Room, 18th Nov., 1859.**

To the Hon. M. D. K. Taylor, Speaker of the House of Representatives:

The committee on the Judiciary, to which was referred the resolution instructing said committee to take into careful consideration the 24th section of the 3rd art. of the Constitution of the State of Texas, and to report to the House on or before Friday inst., at 10 o'clock, A. M., how far said clause may operate as a restriction of the right of members of the Legislature to vote for or elect one of their own body to the U. S. Senate. Whether the resignation of a member may obviate any or all the difficulties which may appear in said section; or whether said section presents any serious difficulties whatever, have had the same under consideration and a majority of the committee have agreed upon the following report:

The section of the Constitution is in the following words, to-wit:

"No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased during such term; and no member of either House of the Legislature shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part by either branch of the Legislature; nor shall the members thereof be capable of voting for a member of their own body, for any office whatever, except it be in such cases as are herein provided."
The President for the time being of the Senate, and Speaker of the House of Representatives, shall be elected from their respective bodies."

The section under consideration contains three distinct and independent provisions in regard to officers. The first and second relate to the eligibility of members of the Legislature to offices created by the Legislation of the State of Texas, and over which it has the exclusive control; and your committee is not advised that any one, for a moment, contends that either of these provisions relates to, or embraces the office of U. S. Senator. The third provision of the section which reads thus, "Nor shall the members thereof be capable of voting for a member of their own body, for any office whatever, except it be in such cases as are herein provided," it is contended by some embraces the office of United States Senator, as well as all State offices, and others deny the proposition. To determine this question correctly, a brief review of the organization of the Federal and State governments and their respective powers, becomes necessary. The several States formed the Federal government and established the Constitution of the United States, in which is enumerated all the powers delegated by the respective States to the general government, and therein provided for the exercise of its powers by means of three co-ordinate departments, Executive, Legislative and Judicial. The Legislative department consists of a congress composed of two Houses, a Senate and House of Representatives, to be chosen, the former by the Legislatures of the respective States and the latter by the electors of the several States. The 3rd section of the 1st article of the Constitution of the United States provides that, "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years," and "no person shall be a Senator who shall not have attained to the age of thirty years and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen." By the first of these provisions the fact is clearly established that a Senator to Congress is an officer of the United States Government, and not a State officer; and the second provision prescribes all the qualifications that a man is required to possess to make him eligible to that office.

The Constitution of the United States is the paramount law of the land, and no subordinate power can add to, or subtract from, the qualifications therein prescribed for a Senator to possess.

The government and Constitution of the United States were
in existence, and all its officers provided, when the people of Texas, by their delegates, met in convention in the year 1845. For what purpose did the convention of Texas assemble? It was to form a State government subordinate to the Constitution of the United States, and not to restrict or abridge the rights of the citizens of that government, or to alter the Constitution of the United States in any particular whatever. The members of that body well understood the extent of their powers and it cannot be presumed that they intended to extend them. They were clothed by the people with the power to frame a Constitution for their government as a State and to establish the necessary officers to execute that government, and with no other powers. It is not to be presumed that they extended their powers, or intended to impose disabilities upon citizens of Texas to which those of other States were not subject. This view of the subject is fully sustained by the first and second provisions of the 24th section of the 3rd article of the State Constitution, under consideration, and by a fair construction of the language used in the third provision of the section, and the established rules of interpretation, no offices are embraced except such as were, or should thereafter be, created under the constitution and laws of the State. The repetition of the words "of this State" in the third provision of the section, would not have restricted or limited the effect or operation thereof. If a different construction be given to the provision, and should be sustained, it will present the strange anomaly of a single State altering or amending the Constitution of the United States in violation of 5th art. of that instrument. But it is said that the provision of the State constitution does not affect the eligibility of a member of the Legislature to a seat in the American Senate in any manner whatever, but that the members are precluded from voting for a member of their own body because they are sworn to support the State constitution, and the terms therein "any office whatever" includes the United States Senator. If this construction of the State constitution is to obtain, it would establish the absurd proposition that if a member of the Legislature does an act which is pointedly prohibited by the constitution of the State, nevertheless the act is valid. This position cannot be maintained, for there is no rule of law better established or universally conceded, than that an act done, which is prohibited by law, is null and void. This is universally true in case of statutes, and, if it were possible, would be more certainly so when the prohibition is prescribed by the constitution of the State. The sovereignty of the people of Texas is vested in both,
the Constitution of the United States and that of the State. They together form the State government as if both were one instrument, the former being the supreme and paramount law in case of conflicting provisions. This being admitted, and it is conceived to be undeniable, another rule of construction which is well established, sustains the view of the majority of your committee; that is, that both instruments are to be construed together and reconciled to all their provisions, and in case of inconsistent or incompatible provisions, the paramount law is to be sustained and the other is null and void. The power of the members of the Legislature to elect a United States Senator is derived exclusively from the Constitution of the United States. Such being the case, any provision in the State constitution, if such there be, which is denied, which undertakes to limit the exercise of the power, is and would be nugatory and void.

The Constitution of the State did not intend to embrace the office of United States Senator in the section under consideration, nor to make any provision on the subject, and in this view of the subject the majority of your committee is fully confirmed by the action of the distinguished statesman Rusk, (who presided over the deliberations of the convention that framed our State constitution and was as familiar with its provisions as any man that lived,) in the United States Senate upon the contested seat of Mr. Trumbull of Illinois. The Constitution of the State of Illinois contained a similar provision to the one under consideration, and yet the most distinguished jurists in the American Senate held the provision inapplicable to the office of United States Senator. On that occasion General Rusk acted under the Constitution of the United States, and members of the Legislature when electing a Senator of the United States, act under the same authority, and not under the State constitution. On the same occasion, the other distinguished Senator from Texas, Gen. Sam Houston, entertained the same views and cast his vote with Gen. Rusk for the admission of Mr. Trumbull to his seat in the Senate, notwithstanding the inhibition or restrictions in the constitution of the State of Illinois. The Constitution of the State of New York contained a positive inhibition against a member of its Legislature being elected U. S. Senator. Yet Nathaniel P. Tallmadge, a member of the State Senate, after full discussion, was elected to the Senate of the United States. Besides these authorities the silence of the members of the convention, who framed the State constitution, upon this subject, strengthens the view of the majority of your committee, and they are therefore of the opinion that the 24th
section of the 3rd article of the State constitution does not operate as a restriction of the right of members of the Legislature to vote for or elect one of their own body to the United States Senate, and that said section presents no serious difficulties whatever.

The remaining proposition submitted to the committee is as follows: "whether the resignation of a member may obviate any or all the difficulties which may appear in said section," is considered as already answered. But, if others should be of a different opinion from the committee, and believe that the section under consideration does operate upon them, I am instructed by a majority of the committee, to report that if section 24th of article 3d, prohibits members of the Legislature from voting for a member of their own body for United States Senator, the prohibition only exists while the party to be voted for is a member, and by resigning his seat in the Legislature he would cease to be a member, and would not be obnoxious to the provisions of the section alluded to, after vacating his seat in the Legislature by resignation. All of which is respectfully submitted,

C. W. BUCKLEY, Chair'n.

Mr. Middleton, one of the committee on Private Land Claims, reported a bill for the relief of Mary Elam, and recommended its passage.

On motion of Mr. Harrison of Van Zandt, the following Senate bills were taken from the Speaker's table, read first time and disposed of as indicated.

A bill for the relief of James Jennings. Referred to committee on Private Land Claims.

A bill appropriating $10,000 or so much thereof as may be necessary to enable the Governor to offer rewards for fugitives from justice.

On motion of Mr. Ross, the rule was suspended and the bill read second time and passed to a third reading, and on a further suspension of the rule, the bill was read third time and passed.

A bill supplementary to and amending of an act entitled "an act to provide relief for pre-emption settlers and their assignees under the act of 22nd January, 1845, the act of the 7th Feb., 1853, and the act of 13th Feb., 1854, and actual settlers in the Mississippi and Pacific Railroad reservation." Referred to committee on Public Lands.

A bill to validate certain surveys in Fisher & Miller's, and Peter's Colonies. Referred to the committee on Public Lands.

Mr. Franklin offered the following resolution:

Resolved, That the committee on the Land Office be and they
Mr. Mills offered the following resolution:
Resolved, That the committee on Public Printing, have printed 10,000 copies of the Governor's message for the use of this House.

On motion of Mr. Baxter, laid on the table.

Mr. Lawter introduced a bill regulating the distribution of Laws and Journals of the State. Referred to committee on State Affairs.

Mr. Crooks offered the following resolution:
Resolved, That the committee on Printing be requested to ascertain the amounts claimed by the State Gazette and Intelligencer, for papers furnished this House during the present session, and that they report the same to this House at their earliest convenience. Lost.

Mr. Lewis of Montgomery, offered the following resolution:
Resolved, That the committee on Internal Improvements be instructed to enquire into the propriety and policy of loaning to Railroad companies, on the terms and condition stipulated in the existing law on that subject, the interest as it is paid into the Treasury by the several companies to which loans have been made, and that the like disposition may be made of the interest of that part of the proceeds of sales of the public lands to which the free public schools are entitled. Adopted.

Mr. Dougherty introduced a bill for the relief of the heirs of David M. Shropshire, dec'd. Read first time and referred to committee on Private Land Claims.

Mr. Davis of Hays, introduced a bill to regulate the sale of virulent poisons and the use of the same, and to prevent slaves from using or handling the same. Read first time and referred to committee on Slaves and Slavery.

Mr. Houghton offered the following resolution:
Resolved, That the committee on Public Lands be requested to take into consideration the propriety of the passage of a law to require the Commissioner of the Gen'l Land Office to issue Unlocated Balances to parties whose surveys prove to be less than that called for in the patent, and report by bill or otherwise. Adopted.

Mr. Townes introduced a bill for the relief of the city of
Austin. Read first time and referred to committee on State Affairs.

Mr. Hartley introduced a bill for the protection of game on Galveston Island. Read first time and referred to committee on Stock and Stock raising.

Mr. Maverick introduced a bill for the relief of the Buffalo Bayou, Brazos and Colorado Railroad Company and their assignees. Read first time and referred to committee on the Judiciary.

Mr. Mills introduced a bill supplementary to the act regulating proceedings in the District Courts, approved May 21st, 1846. Read first time and referred to Judiciary committee.

ORDERS OF THE DAY.

A bill for the relief of Charles A. Russell together with report from committee on Claims and Accounts, was taken up, and on motion of Mr. Billingsley re-committed to committee on Claims and Accounts.

A bill supplementary to and amendatory of an act entitled an act to provide for pre-emption settlers, together with report from committee on Public Lands was taken up, and on motion of Mr. Harrison of Van Zandt, re-committed to said committee.

A bill to relieve Jackson L. Leonard from the disability of minority and permit him to practice law. Read second time and ordered to be engrossed.

A bill to incorporate Houston Hook and Ladder Co., No. 1, and Liberty Fire Company No. 2, of the city of Houston. Read second time, and the amendments by the committee adopted and the bill ordered to be engrossed.

A message was received from the Senate, announcing to the House that the Senate had adopted the following resolution:

Resolved, That with the concurrence of the House, a joint committee of three from the Senate and five from the House be raised to take into consideration the propriety of creating one or more new Judicial Districts from the present 16th District, and that they report by bill or otherwise. And that Senators Walker, Throckmorton and Erath had been appointed on said committee. And that the Senate had appointed Messrs. Wigfall, Potter, Paschal, Wallace and Stockdale a committee to act with committee of the House of Representatives on their resolution to inquire into the expediency of calling a convention to form a new Constitution.

On motion of Mr. Mabry, a call of the House was ordered.—

of Robertson, Navarro, Nelson, Perry, Pickett, Shannon, Taylor, and Walker. A quorum being present the call was suspended.

Mr. McKnight moved to adjourn till 10 o'clock to-morrow. Lost.

A bill to approve the act of the General Assembly of the State of Louisiana, incorporating the Louisiana, Arkansas and Texas Navigation Company with the modifications made to the same by the Legislature of the State of Arkansas together with report from committee on State Affairs, taken up and referred to committee on Internal Improvements.

A bill for the relief of the heirs of James W. Bass, dec'd, with report from committee on Private Land Claims was taken up, read second time and ordered to be engrossed.

A resolution instructing the Judiciary committee to enquire into the expediency of having a District Attorney in every county together with the adverse report of the Judiciary committee, was taken up and the report adopted.

A bill for the relief of settlers on eleven leagues claims, together with report from committee on Public Lands asking its reference to committee on the Judiciary, was taken up and report adopted.

A bill supplementary to an act entitled an act to amend the first section of an act entitled an act to organize the Supreme Court of the State of Texas, approved May 12th, '46, approved Nov. 30th, '50, approved Aug. 28th, '56, together with report from the Judiciary committee, was taken up, the amendments by committee adopted; bill read and ordered to be engrossed.

A bill for the relief of the heirs of A. D. Duncan, dec'd, together with report from committee on Private Land Claims, was taken up, read second time and ordered to be engrossed.

A bill for the relief of J. J. McBride, assignee of Jno. Jordan, with report from committee on Private Land Claims, was taken up and on motion of Mr. Henderson laid on table.

A bill for the relief of Richard N. Williams with report from committee on Private Land Claims. Read second time and referred to committee on Judiciary.

Mr. Duncan moved to adjourn till 10 o'clock to-morrow. Lost.

Mr. Taylor, by permission, introduced a bill making an appropriation to day for the proclamations of the Governor. Read first time and referred to Finance committee.

On motion of Mr. Middleton, the bill for relief of J. J. McBride, assignee of John Jordan, was taken up.

Mr. Foshee moved a re-commitment of the bill to Judiciary committee.
On motion of Mr. Shannon, the bill was re-tabled.

Mr. McCutcheon moved to adjourn till 10 o'clock to-morrow. 

The resolution instructing the Judiciary committee to examine into the propriety of passing an act to suppress carrying concealed weapons, with the adverse report of said committee, was taken up.

Mr. Foscue moved to re-commit the resolution to the Judiciary committee with instructions to report a bill. Lost by the following vote:


On motion the House adjourned till 10 o'clock, A. M., to-morrow.

House of Representatives, 

Austin, Tuesday, Nov. 22nd, 1859. 

House met pursuant to adjournment—roll called—quorum present—journal of yesterday read and adopted.

Mr. Buckley, chairman of Judiciary committee, reported a bill to relieve A. E. Benham, daughter of J. J. Benham, from the disabilities of minority, and recommended its passage. Bill read first time.

Also reported a substitute for the bill to legitimize Donacceana Thomas, late Donacceana Howland, and recommended its passage.

Mr. Short, one of the committee on the Judiciary, reported, recommending the passage of a bill to incorporate the Western Texas Life and Fire Insurance Company.