NEW ORLEANS DAILY CRESCENT.

PUBLISHED EVERY DAY, SUNDAY EXCEPTED, AT NO. 93 ST. CHARLES STREET, BY J. H. MADDOX.

VOLUME V. WEDNESDAY MORNING, OCTOBER 6, 1852. NUMBER 186.

OFFICIAL.

DEBATES OF THE STATE CONVENTION OF LOUISIANA.

FRIDAY, July 16, 1852.

JURISDICTION OF JUSTICES.

MR. ISAACKS offered the following Article:

"The Legislature shall have authority to extend jurisdiction to Justices of the Peace of all minor crimes and offences."

MR. ISAACKS—I submit that it will be a proper act of this Convention to relieve the parishes in this State of the immense tax to which they are subjected in the necessity to summon juries for the trial of petty crimes and offences. The present mode of procedure imposes not only a heavy tax, but also a large amount of trouble which is wholly unnecessary. Any one familiar with the present mode of trial of these minor cases, knows that the expense is great and oppressive, and that it is also unnecessary. It may be said that the Article which I now offer will deprive citizens of their rights. But I answer that objection by saying that, instead of depriving them of their rights, it gives them their rights at once. The report of the Judiciary Committee sets forth that Justices of the Peace "shall be elected by the qualified voters of each parish, for the term of two years, and shall have such criminal jurisdiction as shall be provided by law." Now, it was only the other day that the Chairman of the Judiciary Committee told us that he was opposed to a similar Article in relation to the city of New Orleans, because it affected the right of trial by jury. This carries the very strong inference that the Chairman of the Judiciary Committee does not think that the Legislature should give to Magistrates the right of trial in any cases without the intervention of a jury. While on this subject, I may notice another objection which I have to the report of the Judiciary Committee. It is not sufficiently distinct in relation to the nature of crimes to be tried before Justices of the Peace. The Chairman of the Judiciary Committee has explained to us, at length, his views as to what constitute misdemeanors, and it is evident that he does not intend that the Legislature shall make a special provision for the trial of the large number of cases which he classed under that name, although, at the same time, he argued that there was a good deal of difficulty in defining the nature of the jurisdiction that a Magistrate might safely have. I apprehend that the Article which I have just offered is not so comprehensive as to give to Magistrates improper jurisdiction, while it is sufficiently restrictive to limit them to safe jurisdiction in all minor crimes and offences.

MR. PERAUX moved that the farther consideration of the Article offered by Mr. Isaacks should be postponed until Tuesday, the 20th inst., to be then taken up with the report of the Committee on the Judiciary.

The motion prevailed.

BAIL.

MR. OLIVIER, of St. Mary, having voted in the majority, yesterday, on the substitute for Article 108, offered by Mr. Eustis, and adopted, moved a reconsideration of the vote, which was granted.

MR. O[illegible]—I desire to offer an amendment to the substitute offered yesterday by the delegate from Orleans. I have the same object in view as that delegate; but his substitute does not cover the whole ground. I wish that substitute to be now read, that there may be no mistake as to the nature of my amendment:

"All persons shall be bailable, by sufficient sureties, unless for capital offences, where the proof is evident or presumption great, or unless after conviction by a petty jury for any offence or crime punishable with death or imprisonment at hard labor. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

A man may be convicted of a crime punishable with imprisonment in the penitentiary, and yet may not be convicted "by a petty jury." I do not think that when a man is arraigned, the law makes it obligatory on him to be tried by a jury of his peers. He might, then, if he waived the trial by jury, be pardoned under this substitute article, after conviction of an offence punishable with imprisonment and hard labor. It is not my purpose to restrict the privileges guaranteed to the Governor, by Article 47 of the Constitution, nor to affect his rights under that article. But I wish the law of the land to be so plain, that the decisions of our Courts may not, under any circumstances, be set at naught. Under the operation of this substitute, the true intention of the law may be violated. The Governor may do this. The present Governor has shown that he would be inclined to act against the spirit of this substitute Article, if it shall not be so carefully guarded as to restrain the Executive prerogative. It was only the other day, in my own district, that a man was convicted of manslaughter, in the District Court. He appealed to the Supreme Court, and although his case was advocated by some of the most able lawyers in the State, the Supreme Court affirmed the decision of the District Court. Yet, he was reprieved by the Governor, with this provision, that he should enter into bond for $10,000, lest his reprieve by the Governor should not be confirmed by the Senate. The Senate refused to confirm, and the criminal is now a fugitive from justice. Here is a solemn decision of our Supreme Court, confirming a decision of conviction by the District Court, set at naught. This is a disgrace to the State of Louisiana. It would be a reproach upon this Convention, were we to be so lax in our provisions for the punishment of crime, as to leave in this important Article room for a possibility, that solemn decisions of our Supreme Court might be evaded under it. If a man can be convicted otherwise than "by a petty jury," it is clear that the insertion of these words in the Article is unnecessarily narrowing the scope of our own views, and restricting the operation of a constitutional provision, on which so much depends, for the safety and well being of our people, and the honor of our State. I shall, therefore, move to strike out the words "by a petty jury." Had I been here on Monday, when Article 47 was under consideration, I should have moved, that in all cases where an appeal may be taken, the criminal shall remain in the hands of the Sheriff, from the time of conviction, until the appeal shall be disposed of. I am satisfied that that is the true kind of bail which will effectually prevent the evasion of punishment.

MR. DUFOUR.—The gentleman's object would be accomplished, by striking out the words "by a petty jury." Conviction for all offences such as are excepted by Article 108, as adopted yesterday, would thus preclude bail. It matters not whether the prisoner may waive a trial by jury, or not. He may stand convicted, either by his own confession or by the decision of a petty jury. If a prisoner pleads guilty, he is convicted to all intents and purposes. On a prisoner being arraigned, and confessing, he stands convicted without any decision, so that by leaving out the words "by a petty jury," the operation of the Article will be free from exception or evasion.

MR. OLIVIER.—Before the vote shall be taken on my amendment, I will remark, that although it is perfectly clear that the Governor has no right to order a party to give bonds, lest the Senate may not confirm his act of reprieve, yet, this has been done, and may be done again; and although the Sheriff has no right to take such bonds, yet Sheriffs have taken them; and we know that when commanded by the Chief Executive of the State, they may do the same thing again. I wish to see the State and justice protected against such bonds and their consequences.

MR. OLIVIER's motion to strike out the words "by a petty jury," was carried.

The substitute for Article 108, thus amended, was re-adopted.

DUELING.

The Convention resumed consideration of Article 130, which had been read on the previous day, but on which no debate had ensued. The Article is as follows:

"Article 130. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons with a citizen of this State, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it, with a citizen of this State, or who shall act as second, or knowingly aid and assist in any manner those thus offending, shall be deprived of holding any office of trust or profit, and of enjoying the right of suffrage under the Constitution."

When this Article had been read,

MR. LEBLANC moved to reject the same.

MR. CONNELY moved to lay Mr. LeBlanc's motion on the table.

The question came up, this day, on Mr. Connely's motion to lay on the table; and Mr. LeBlanc's motion to reject the Article was lost by a vote of 73 yeas, to lay it on the table, against 33 nays.

MR. CASTELLANOS offered the following substitute for the above Article:

Article 130. The Legislature shall, from time to time, make such Legislative enactments as they may deem best calculated to suppress the practice of duelling in this State.

MR. CASTELLANOS—I wish to set myself right before the Convention in relation to my vote on Article 130 of the Constitution. I think that the course of gentlemen in this Convention ought to be consistent with the duties actually imposed upon them as members of this Convention. I take the ground that we must not assume duties which we are not authorized to perform in the work of framing a Constitution. I take the ground that the Legislature has the right to inflict punishment for offences, and I ask if the provision in Article 130 is not a punishment for the offence of duelling? I think that gentlemen will admit that what properly belongs to the Legislature ought to be left to the Legislature.

But I take the further ground, that this law does not operate equally on all our citizens. It enforces its penalties upon some citizens who may be placed in positions to incur them, while it exempts other citizens who may be guilty of the very same act or offence. It is unjust, because it disfranchises and deprives of certain rights the citizen who shall fight a duel, or aid, in any manner, in a duel with a citizen of this State, while the citizen who fights a duel, or assists in one, with a person who is not a citizen of this State, although he commits the very same offence, does not come within the scope of this Article, and is not liable to punishment.

Why this distinction? Is not the offence the same in the one case as in the other? If fighting a duel makes a man an offender, it surely ought to make offenders of all men who participate in the practice.

But I consider that this is a subject which it is the duty of the Legislature to discuss. The Legislature can properly shape the punishment for this offence, so that equal justice shall be done to every citizen. I hold that the Article 130 of the Constitution is an injustice to the citizen. It conflicts with the spirit of our Government, and with the Constitution of the United States, which clearly guards and defines the right and position of the citizen at the polls. I ask every gentleman in this house, if it is not degrading that a citizen, when he goes to vote, should be obliged to incriminate himself, or, if he refuses to take the oath, that he should subject himself to doubt of having committed an offence punishable by the laws of the State. I will take the case of a man who has fought a duel. He is asked at the polls if he has ever fought a duel, or assisted in a duel, with a citizen of this State. I submit whether this is not in opposition to Article 10 of our Constitution, which says that every free white male who has attained a certain age, is a citizen of the United States, and shall have resided a given length of time within this State, shall be entitled to vote. Article 10 contains all the qualifications to entitle a man to vote. There are no restrictions in that Article, when the questions of citizenship and residence are satisfied.

I contend that a man has a right to present himself at the polls, and assert his privilege as a voter, without being subjected to the inquiry if he has committed an offence of this nature. That is a right inchoate with our Government itself, and grave indeed must be the crime for which the citizen is deprived of it.

I am not here advocating the practice of dueling. I am opposed to that practice. But I ask why the penalties of this Constitution are not applied to those offences which are daily committed on our streets? Why are its most marked and severe penalties reserved for a secondary offence? Our Constitution ought to be comprehensive and stringent in its provisions to prevent murders, punish street fights, suppress felonies and the like; but, by this Article 130, you deprive the man who has fought a duel of the privilege which you give to the felon. The felon is not disfranchised—he may hold office—he is not placed under the ban of the Constitution. I wish to fasten attention to this odious distinction, which places the felon above the duelist.

I refrain here from entering into any argument on the subject of duelling. But I believe that, so long as man is man, dueling shall be practiced, whatever may be the penalties imposed. It is needless for me to illustrate by example, that men will fight duels without looking to the sacrifice. Such examples have come under the observation of all of us. But if duelling is to be punished as an offence, why should we take from the Legislature that which properly belongs to the Legislature, the right to prescribe the punishment?

We have, in this Convention, resolved to take from our Constitution all of its restrictive features. I have listened to the beautiful language of gentlemen while they were maintaining that *no* restrictions should be placed upon the qualifications of voters. Do they now intend to recede from that noble ground? Do they intend to recede so far as to favor a restriction so palpably unjust and offensive to the rights of the citizen?

Another principle has been asserted and acquiesced in by this Convention. It is to take from the Constitution every thing Legislative in its character, keeping in view that we came here for the sole purpose of framing the organic law. I now call upon gentlemen to adhere to that principle.

I agree with all those gentlemen in this house who think that dueling ought to be suppressed, as far as it is possible to suppress the practice. The only difference of opinion in this Convention is as to the mode. Let us then leave to the Legislature to consider what that mode shall be. But do not let us, while we are boasting of stripping our Constitution of all restrictions, allow this Article 130 to remain in the Constitution. If consistency has any place in this Convention, I call upon gentlemen to take from our Constitution that odious—that barbarous restriction.

I am opposed to Article 130:

1st. Because it is odious in its intention, scope and influence.

2d. Because it makes unjust distinctions between citizens of this State and citizens of other States, in punishment for the same offence. I might fight a duel with a citizen of Mississippi, or with a European, and incur no penalty, whereas my offence would be identically the same as that which might subject me to the deprivations prescribed in Article 130.

3d. Because this Constitutional provision has failed to suppress the practice of dueling.

4th. Because it is an unjust restriction.

5th. Because it is Legislative.

One remark more. Why has it been found that the Constitutional Article 130 has done nothing to put down the practice of dueling? I attribute it to this—that the Constitution of the State has put the duelist and the murderer on the same footing. The Constitutional provisions against dueling are repugnant to reason and common sense, and openly at war with the well matured opinions of society. Therefore, no punishment for the offence of dueling can ever be awarded. Can gentlemen cite one instance of a man having been found guilty of murder where his antagonist had fallen in a duel? No. All the eloquence of the best Attorney General that this State ever had, could not bring such a verdict. It will be well, therefore, for this Convention to leave the subject of this Article to the Legislature, which body will, no doubt, adopt the most salutary operative law to put down the practice.

MR. JENNINGS—I am opposed to the gentleman's substitute in every aspect in which it may be presented. I did not think that it would be proposed in this Convention, to pluck from the Constitution its brightest gem. I am well aware of the objections to this constitutional article against dueling. They have been loudly and industriously uttered, but have failed to affect the integrity of that noble provision in our Constitution which the great mass of the citizens of Louisiana contemplate with the proudest satisfaction. I was struck for a moment, with one very specious objection urged by my colleague from NewOrleans (Mr. Preaux) the other day, wherein he represented the injustice of Article 130, by showing that the individual who sent the challenge was punished under the provisions of that Article, while he who provoked the challenge was allowed to go unpunished. It is a sufficient answer to this objection, that if we look at the law of the land and see that it is successful in its general operation, it behooves us not to throw it aside because it does not meet every case.

I think that this law has operated well. There can be no doubt that it has prevented many challenges being sent. Farther, it is now well understood that no challenge is sent until it is known that it will be accepted. I say that this is the case in the majority of instances. This understanding is usually obtained before the challenge passes. Before the Constitution put its mark on the practice of dueling, citizens were constantly liable to annoyance by the disposition of many persons to send a challenge on every trifling occasion of offence, whether imaginary or real. This annoyance has been abolished by the operation of this Constitutional law. Some worthless individuals may continue the practice, but gentlemen are absolved from the necessity of recognizing them by the Code itself. No man of worth and character will give up the privilege of being an American citizen, that he may engage in a duel, unless the offence is great, and so peculiar in its character that all other means are unavailing to wipe it out.

This very article in the Constitution of Louisiana has been the theme of more praise throughout our whole country and abroad, in the leading periodicals, while discussing the beauties and defects of Constitutions, as well as in the halls of legislation and other public assemblies, than any other feature of our Government or social organization. In Texas, the State Convention to remodel the Constitution met at nearly the same time as ours, and incorporated in the organic law of Texas nearly the precise words of Article 130 of our Constitution. Several States, since that time, have adopted the same provision in the organic law. In the State of Missouri they have shown how extremely anxious they have been to destroy the practice of dueling, on the ground that its worst effects usually fall on the innocent wife and children. The law of Missouri makes the survivor provide for the wife and children of the deceased. Here is the law of Missouri:

"It shall be the duty of the General Assembly to provide by law for the mode and manner in which the survivor of a duel and his estate shall be rendered responsible to and be charged with a compensation for the wife and children of the deceased."

But, sir, although we have not gone so far as this in our own State, we have gone far enough to do us honor. We are entitled to respect, with pride, a noble provision in our own Constitution which has elicted much approval in other States and been adopted in the re-structure of other State Constitutions.

One of the most plausable objections to this law is this: that a citizen of this State, under the operation of the dueling law, may be insulted at any time with impunity, whereas recourse is open for satisfaction of insult to any one who is not a citizen of this State. Although I do not attach much importance to the objection inasmuch as it is quite partial, betokens a spirit of dissatisfaction, and is not such a view of the law as a good citizen ought to take, I had thought that the objection might be removed and with that view prepared the following substitute which I shall now simply read to the Convention:

"Any citizen of this State or any person residing or sojourning therein who shall after the adoption of this Constitution fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid and assist in any manner, those thus offending, shall be deprived of holding any office of trust or profit and of enjoying the right of suffrage under this Constitution acquired and to be acquired.

Another objection urged with some force against this law is that it opens the door to assassinations and kindred crimes. All I can say in answer to that objection is that when such offences are committed, they will be properly visited by the law of the land, and as to those cases of an aggravated nature which have often been referred to as demanding a resort to hostile weapons, I believe that no jury will ever find a man guilty when he can prove that the offence for which he sought violent redress was such as could not have been wiped out by any other means.

But how far are we called upon to acknowledge the innocence of dueling? I take the case of a man well skilled in the use of duelling weapons who gives mortal offence to another man, in the full knowledge that he to whom he is offering this outrage is all unskilled in the practices of dueling, as well as in the use of those weapons with which it is carried on. The offended party is compelled to send a challenge—to do so or to bear the brand of "*coward*" are the alternatives presented—he has no Constitutional law to shield him from reproach—he challenges and the offender exultingly accepts, the latter of course naming his choice of weapons. The parties go on the field. True to all expectation, he who received the insult is the victim. I ask if this is not as deliberate murder as can be committed?

True, the man may avoid being murdered—he may reject the unequal terms of combat or he may decline to challenge; but, without this constitutional law, he would be stigmatized as a coward; and we know that a man, whether he is a coward at heart or not, will offer any sacrifice before he will consent to bear that stigma. Mr. President, I mean it not irreverantly by introducing the sacred volume into this discussion; but it seems to me that when Cain having shed his brother's blood, was branded with the mark of divine indignation, and made a fugitive and a vagabond on the earth, he was in a condition in some respects assimilated to the individual in our community who, before the adoption of this Article in our Constitution, chose not, for whatever reasons, to send or accept a challenge. Sir, he was *pointed at with the finger of scorn, shunned and despised by his fellow-men*, with the stigma of society stamped upon him, until he might well exclaim in the pathetic language of the holy book, that for refusing to risk his own or another's life "his punishment was greater than he could bear."

I trust, sir, that the substitute may not prevail, and now move to lay it on the table. I can never by my vote consent to expunge from our Constitution one of its brightest gems.

MR. BULLARD suggested that if Article 130 were adopted by this Convention, there should be an amnesty for all past offences.

MR. HAYS—I am in favor of the adoption of this clause as it now stands, and I hope it will be engrafted in the Constitution without any change whatever. All of us agree that the practice of dueling is degrading and demoralizing. There is not a gentleman upon this floor, I presume, who does not feel upon this subject as I feel, and who, could he see any effectual means of suppressing the practice, would not give the measure his hearty and cordial support. Nothing, sir, can be more desirable than legislation capable of effecting such a purpose: but we have seen how utterly futile has been all legislation to provide for its punishment. There is not a single instance on record in the whole country of a man having suffered the penalty of the law for the offence of dueling. This has been because the sound judgment of a jury invariably acknowledges that the punishment for dueling is too great, besides being, in an important view, odious in this, that it places the man who fights a duel on the same footing with the felon and the murderer. Public opinion recoils from such a classification of men. The better elements of the human character conspire and combine to reject it. Thus the law is a nullity, and it is the part of wisdom to seek a remedy in a law which may be reconciled with common sense and social prosperity by the measure of its soundness, its justice and its moderation. To make laws effectual the penalty for their infringement must be certain. When the punishment is certain, when it attaches by the mere operation of the law itself, without the intervention and uncertainty of judge or jury, the law will be respected. Here, sir, is the benefit of this clause of the Constitution. The penalty attaches at once upon the infringement of the law—a penalty, too, which a correct public sentiment can justify, and yet at the same time sufficiently severe to enforce obedience.

In a country like ours, where the avenues to the highest honors and positions are open to all—where the privileges of citizenship are so numerous and so gratifying to human pride, there can be no greater punishment than to say to a man, "Sir, you have been engaged in a duel; you have violated the Constitution of your State; you have thus forfeited the most sacred right of an American citizen; you can not vote." To a high-minded citizen—to any good citizen—this penalty must indeed be a severe one; to the man of keen sense and correct pride of character, it must be oppressive to the extreme point of endurance. Such a man looks to the past. His sound reflection forces him to the acknowledgement that he has committed an error, the serious consequences of which he now, for the first time, contemplates. He looks to the future; the prospect is a blank. Honor, station, and all that can stimulate honorable energy, are effaced from his future. There is nothing on which the objects of his ambition may be impressed. The punishment is indeed terrible. Punishment such as this is guaranteed by article 130 of the Constitution. Those who think that it does not go far enough, may search the records, and they will find only how ineffectual has been all legislation to go farther. The duelist errs, but no debasing sentiment prompts his course; notwithstanding his error, the most noble, the most sacred affections of family and friends will still cling to him. Human reason and a healthy civilization alike resist the monstrous idea of classing him with the felon and the murderer.

But some gentlemen tell us that this article of the Constitution is the prerogative of the Legislature, and should have no place in the organic law. The best answer to these gentlemen is to point them to their own arguments, where, in the same breath, they entertain us by broadly denouncing all restrictions of the right of a citizen to vote, as guaranteed to him by the Constitution of the United States. They contend that this law ought not to find a place in the Constitution of Louisiana, because it is a restriction of the right to vote. Those gentlemen do not keep in view that our Constitution contains other restrictions of voters. It requires the voter to be twenty-one years of age; that is a restriction; it requires that he shall have resided a certain length of time within the State; that is another restriction. Argument has been exhausted to show that these restrictions can ever be properly regulated by legislation. Equally unsatisfactory and unavailing would it be to trust to varying legislation to provide penalties for dueling.

It has been objected to this law that it has not accomplished its object. The objection is not a good one. We know that when the dueling sections, introduced by Judge Chinn, were discussed in the Convention of 1845, the most fearful and bloody consequences to flow from the law were predicted and portrayed. Objections of every hue were presented against the new feature of the Constitution. One gentleman contended that it gave every advantage to the skulking assassin over the open antagonist, while in the operation of the law, another gentleman saw the pathway open to assassinations in broad daylight. The state of things to be brought about by this dueling law was earnestly represented by many of the most sagacious and distinguished members of that talented Convention, as too dreadful for a civilized community to armed men were to fall by the assassin's knife, and contemplate—murders were to multiply—unstreet fights were to become the order of the day. But, sir, it is our proud province now to show that not only have none of these inauspicious predictions been realized, but, on the contrary, the law has really accomplished its purpose beyond the anticipations of its most sanguine advocates. The sacred right of suffrage—the open path to honor and emolument—had never been sufficiently appreciated before this rod of terror was held over our citizens. Since that law came into operation, there has not been one duel in our State where there had been ten before. And I have yet to learn that street fights, or assassinations, or murders of any kind have occurred since that time, beyond the ratio of the increase of population. Sir, if any member of this Convention can satisfy me that murders and street fights have increased with the operation of this law, I shall vote to expunge it.

My colleague, who offers the substitute now before the Convention, complains that this law is unequal, unjust and oppressive in its operation, because it disfranchises a citizen of the State if he demands of one of our own citizens satisfaction for an insult, whereas he may obtain redress from a citizen of *another State* without incurring this penalty. Sir, I look upon that as the brightest feature in the law, and in its absence would never consent to give this clause of the Constitution the sanction of my vote. Towards our own citizens we are wisely restrained from the further practice of what, in the State of Louisiana, may be styled semi-legalized violence; but our Constitution does not tie us down in our intercourse with strangers. It has not the power to disfranchise the citizens of another State, and has therefore most wisely decreed that, in our social relations with them, we shall be placed upon a fair and equal footing.

One leading necessity for retaining this clause in the Constitution is to be found in our regard for a sound public opinion, which, after all, I believe to be the only, or at least the most, effectual means of suppressing the practice of dueling. The clause in the Constitution of '45 has already done much towards forming a correct public opinion on this point, and if it be retained in the Constitution which we are now making, it will prove entirely effectual. But if you strike it from the Constitution, the effect will be most injurious. It will be said, and exulted over, that an attempt was made to abolish the practice of dueling in Louisiana by a constitutional law, but that the law was found to be inoperative, and in six short years it was repealed. It would be saying, in effect, that the people of Louisiana are opposed to any restrictions upon dueling. This would be taking a long and dangerous step backwards in civilization. On the other hand, if this Constitution shall preserve Article 130, public opinion will be strengthened and justified, the wisdom and virtue of the law will be vindicated, a more general respect for it inculcated, and increased efficiency given to its operation.

But we are told that by this law we are striking a blow at the chivalry of the State of Louisiana—that its citizens are always able to defend themselves, and want no Constitutional protection, or Constitutional provisions, to settle their difficulties for them. All that I have to say in answer is, that if the chivalry of our State is shown in the practice of dueling, it is the lowest of all chivalry to shed the blood of our own citizens, and the sooner we tear that leaf from the records of our chivalry the better. There are never wanting higher occasions in the history of nations for exhibitions of their chivalry.

There are, indeed, times when the most prudent of men feel a necessity to resort to arms. But on these occasions the wound has reached the heart of hearts, and reason fails to dictate its remedies. On such occasions all prohibitions, whether Constitutional, Legislative, or of any other character, are disregarded, and that law which then becomes the highest law, and assumes sole control of the human breast—the law of honor reigns unrestrained. But these cases, thank God, are rare—so rare, that they do not effect the great question now before the Convention, for laws in their operations must be general, and cases of individual hardship must yield to the general good. The dueling clause in our State Constitution has become a leading principle of our social policy. I trust that this Convention will so recognize it.

MR. REEVES—I rise to oppose the substitute offered by the gentleman from NewOrleans, Mr. Castellanos. The object of the gentleman in offering this substitute is to strike out and totally annihilate Article 130 of the Constitution. That article is the brightest feature in the whole Constitution. It casts its radiating influence over every provision in that instrument, and points, with unerring certainty, back to the superior intelligence and exalted moral worth of the framers of the Constitution of 1845. Mr. President, it was a noble, humane, and in every sense praiseworthy motive that prompted the framers of that Constitution to embody in it this most salutary article. It was not done until after that venerable and intelligent body had given it the most mature deliberation. And it was done to suppress the odious custom of dueling—that ancient custom, which is the legitimate offspring of barbarism and the pride of all uncivilized nations—that custom which, for centuries past, has swept with tornado power over the nations of the earth, leaving desolation and ruin in its train—that custom, which has shaken to the centre the moral fabric of every nation of the globe. And, sir, it is a lamentable fact that the same barbarous custom has triumphantly winged its flight across the Atlantic, and has found a cordial reception in our own highly favored land—this land, which boasts of being the cradle of liberty, and the social as well as moral paragon among nations—this land, which is illuminated from East to West, and from the Atlantic to the Pacific, by the lights of science, morality and literature! Sir, this odious custom has pervaded nearly every State in our glorious Union, and society has felt its withering influence from the lowest to the highest circles. But, sir, there is a glorious consolation in the anticipation and conviction that Louisiana has arisen in her strength to crush and for ever put an end to this obnoxious practice of duelling. She has emblazoned her veto power against it in the 130th Article of her Constitution. There it stands in the face of the world as a living monument of her bold declarations. Sir, I trust, I hope, that it may stand there until time shall be no more. There it stands, as a beacon-light to her sons, to warn them to spurn that odious custom of dueling, at the peril of their most sacred rights.

Louisiana, by embodying this Article in her Constitution, has excited the admiration of the world, and the States of this glorious Union point to her, as to an example worthy of imitation by them all. This Article has been productive of great good, exercising at all times a most salutary influence, and I trust that it may be permitted to stand in the Constitution, to shed its light and influence upon those who are to come after us—on our sons and sons of sons, as they rise up and lean to respect it. We live in an age of unparaleled progress and improvement, and it is an object near my heart to see our moral standard rise to the highest degree of excellence. Sir, the gentleman has said that we were inconsistent in our course in this Convention. I presume that we all have acted as faithful public servants in the discharge of our duties, being prompted by none other than honest and correct motives; and I trust that all of us will be able to give a faithful account of our stewardship. But I think that gentlemen in this Convention mistake qualification for restriction, and thus confound the true argument, which, I have no doubt, it is their desire to elucidate. And now, Mr President, I have done; but I cannot take my seat without reiterating the sentiment, that my voice shall ever be lifted in opposition to the barbarous custom of dueling. I therefore trust, and confidently hope, that the gentleman's resolution may not prevail.

The substitute of Mr. Castellanos was laid upon the table.

The Dueling Article was then adopted, without amendment, and so nearly unanimous was the vote, that a motion to call the yeas and nays was unsuccessful.

Messrs. Preaux, Hernandez and Staes asked leave to have their votes recorded, against the adoption of the article, which was ordered.

MR. PREAUX gave in the following explanation of his views and vote: I vote "no," because I consider Article 130 of the Constitution of 1845, as a penal statute, and that the guilty party is placed in the situation of being compelled to give evidence against himself, and to support the chances of the sentence of disfranchisement, without a fair hearing of his case, which effects are, in my opinion, contrary to the true principles of a Republican Government.

Article 130 having been adopted, Article 89, which had been postponed with Mr. Preaux's substitute, was next taken up.

MR. COTTON moved to lay the substitute on the table. The motion prevailed.

MR. JONES proposed to amend Article 89, as follows: I farther do solemnly swear that I have not procured any appointment or election by bribery or the purchase of votes, neither directly nor indirectly.

The amendment was rejected.

MR. GUION moved to amend the oath by adding, "I will support the Constitution of the United States, and this State."

MR. DUFOUR thought the amendment superfluous, because the party already swears to do his duty agreeably to the Constitution and laws of the United States, and of this State. The whole object was already embraced.

MR. GUION—The objection of the gentleman is not tenable. I want all officers, both federal and State, to take an oath to support the Constitutions, not only in the line of their official duty, but in all their actions in life.

MR. BENJAMIN—When the first Governor was sworn in under the Constitution of this State, Judge Martin, then Supreme Judge, took the Act of Congress and the Constitution of this State, and made him take the oath of fidelity to both, giving it as his opinion that the oath to observe both was necessary. I think that the amendment of the gentleman from Lafourche is clearly proper.

MR. HUNT—The Constitution of the United States requires that all officers shall take the oath. My colleague is right. The act was passed by the first Congress, and the oath referred to has been required ever since.

MR. GUION's amendment was adopted.

MR. DELONY offered the following additional article, which reads thus:

Article —. The people of this State have the sole and exclusive right of governing themselves as a free, sovereign and independent State, and of exercising each and every power, jurisdiction and right pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the Government of the United States.

MR. DELONY—I desire to advance only a few words in support of this resolution. There are a variety of powers claimed by a large portion of the people of the United States as belonging to Congress. We find ourselves continually disputing as to the rights of Congress. There are implied powers and there are necessary powers, and there are powers in Congress to carry out specific purposes. Now, my desire is that the Constitution which we are now framing for the State of Louisiana will express itself most clearly that the State of Louisiana claims for itself, and reserves to itself, the right to exercise all powers which it has not expressly delegated to the General Government. These are my reasons for placing this resolution before the Convention.

The article was rejected.

SWAMP LAND DONATION.

MR. BENJAMIN offered the following additional article, under the title of General Provisions:

Article —. None of the lands granted by Congress to the State of Louisiana for aiding it in constructing the necessary levees and drains, to reclaim the swamp and overflowed lands in this State, shall be diverted from the purposes for which they were granted.

MR. BENJAMIN—Mr. President, my reason for offering this article is to prevent any casual Legislative authority from diverting the purposes of this grant. I hold in my hand the act of Congress which makes the grant. It is expressly designed to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the overflowed lands therein. The grant was a just one, and all of us know the reason. The citizens of the low lands had, at their own expense, through a series of years, reclaimed a vast portion of the overflowed lands of this State, and the greatest part of the benefit resulting from their act went to the General Government, the improvement bringing a large additional quantity of lands into successful cultivation. There was yet an immense quantity of land to reclaim, and as Congress could not reclaim it in the condition of things, it made a grant of nine millions of acres to this State, that the people of the State might do the beneficial work. Now, sir, I believe that none of us desire to see that grant diverted to other purposes, but the time may come when a Legislature may feel disposed to divert a portion of that magnificent grant to the purposes of improvement in other portions of the State. I therefore hope that the plain design of the grant by Congress may be incorporated in the organic law, so that the Legislature may be restrained from applying any portion of the grant to other purposes than those for which they were intended.

MR. HUNT—I will vote for the article introduced by my colleague, although its incorporation in the Constitution would seem to imply a suspicion that the Legislature *would* do something, which it is plain that it never could, legally or in justice. But I am induced to vote for the article by my recollection that the lands granted to this State for school purposes, were sold and the funds misapplied.

The article was adopted.

ENGLISH AND FRENCH LANGUAGES.

Article 132 of the Constitution being then taken up and read as follows, to-wit:

Article 132. The Constitution and laws of this State shall be promulgated in the English and French languages,

MR. THOMPSON moved to insert at the end thereof, the following words: "unless otherwise provided by law."

MR. THOMPSON—It may be remembered that in former years, when the laws and proceedings of the Legislature were read, it was necessary regularly to elect an interpreter. Now, we have no such election. Our Legislative proceedings are duly read in the language of our country. The cause does not now exist. This shows that the mass of our fellow-citizens are rapidly acquiring a proper acquaintance with our language. As we are now making a Constitution which we hope will last for at least one hundred years, I am anxious that the Constitution may show that we have now made such progress in the American language that it is not deemed necessary to publish anything in the French language, that it may be understood in any part of this State.

MR. COLLENS—The gentleman's amendment is against reason and against facts. It has nothing to support it. I therefore move that it be laid on the table.

Mr. Thompson's amendment was laid on the table. The article was adopted.

EXECUTIVE OFFICERS.

MR. DUFOUR moved to add to the title "Executive Department," the following articles:

Article —. There shall be a Treasurer of the State, who shall hold his office during the term of two years.

Article —. The Secretary of State and Treasurer of State shall be elected by the qualified electors of the State.

And in case of any vacancies caused by the death, resignation or absence of the Treasurer or Secretary of State, the Governor shall order an election to fill said vacancy.

MR. DUFOUR said that the Convention had passed over the consideration of the official position of Treasurer, and also of Secretary of State. The object was that they might be placed by the Convention into strictly the Executive Department. He, therefore, offered the above resolutions.

MR. BENJAMIN asked to know if his colleague had any objections to another resolution, making the Auditor of Public Accounts also an Executive officer.

MR. HERRON offered the following additional article to the above articles:

Article —. There shall be an Auditor of Public Accounts, elected by the qualified voters of the State, who shall hold his office during the term of two years.

MR. WADDILL objected to making the Auditor a Constitutional officer. It was not improbable that at the very first meeting of the Legislature it would be found that the office was unnecessary and would be abolished.

MR. RICHARDSON, of Ouachita, hoped that the motion of the delegate from NewOrleans would not prevail. It was only since the year 1847 that the office of Auditor of Public Accounts was known in Louisiana. Previously to that time, the duties now performed by the Auditor were discharged by the Treasurer. Whether that officer may remain by the voice of the people and the vote of the Legislature, it is not necessary to inquire. Sufficient is it to know that a large portion of the people always have thought, and still think, the office an unnecessary one, and it may be made so. The greatest evil which has afflicted the State of Louisiana is, that we have had too many offices—that the officers have been too well paid; and that is one great cause why many of the people of this State desired to call this Convention. They desired reform—reform in the construction of the offices that drained so much money from the State. The office of Auditor of Public Accounts can be carried on without the office being made a Constitutional one. He thought that under the circumstances, the Constitution ought not to be saddled with that office. Certainly such a movement would be against the popular wish. He hoped that the motion would not prevail.

MR. HERRON's additional article was rejected. The resolutions by Mr. Dufour were adopted.

JUSTICES OF THE PEACE.

MR. PARHAM offered the following article, to come under the head of "General Provisions," to-wit:

The Legislature shall have power to confer jurisdiction on Justices of the Peace, for the trial without a jury of all petty offences; provided that the accused shall not be imprisoned for more than ten days, nor fined more than fifty dollars, at the discretion of the Justice of the Peace.

MR. PARHAM would ground the justice of this resolution on Articles 89 and 107 of the Constitution. Taking these two Articles together, the last Legislature thought that Justices had not the power to act without summoning a jury. During the Legislature a number of petitions came in to that effect from Police Juries in the State. These Police Jurors thought that a law in conformity with the above resolution ought to be passed. The sources of remonstrance were certainly entitled to respect. It was not the proper time to inquire and ascertain how far the provision would operate justly. He believed that it would. His object in offering the resolution to have a Constitutional provision on the subject was that there might be no difference or conflict of opinion as to the powers of the Legislature over the subject in the future.

MR. ISAACKS—I call the attention of the delegate from Madison to the fact that this morning, I offered a resolution giving authority to the Legislature to extend the jurisdiction of Justices of the Peace in the trial of all minor crimes and offences. The resolution of the delegate from Madison must be produced as either an amendment or substitute to his own; and he desired to know which he proposed it to be. The resolution presented by himself (Mr. Isaacks) had, on motion of Mr. Preaux, been postponed till the Convention should take up the report of the Judiciary Committee, which, by resolution of the Convention, would be taken up on Tuesday next. So he preferred that if his resolution did not cover the whole ground, that now offered by the delegate from Madison must be considered and received as a substitute resolution: but, if his resolution of the morning was deemed sufficient, it would be well to defer the consideration of the gentleman's resolution also, until the Judiciary report came up. It was the opinion of some that, in the event of the change being made, it would be the Magistrate's prerogative to summon juries, but much as he disliked the present system, he preferred it to that suggestion, for the reason that it would augment the expenses of each parish in the State, if the Magistrate were clothed with such authority, because Magistrates would summon juries to try all causes where an affidavit had been made, they not having the means to ascertain whether there was probable ground of guilt or innocence before the case was put to the jury. On the other hand, the Grand Jury, under the present system, intervened, as it were, between the Court and the accused, and established a probable ground of guilt before the party was arraigned for trial, and frivolous and malicious cases were thus far checked and prevented from becoming a tax and an annoyance to the District Courts. For these reasons, I prefer the present District Court system to that of a Magistrate with power to summon juries. But the power of Magistrates is an important subject for the consideration of this Convention, and at the proper time I hope it will receive the attention that it merits.

On motion of Mr. Benjamin, the subject was postponed until Tuesday, the 20th, to be taken up with the report of the Judiciary Committee.

THE ELECTORAL FRANCHISE.

The Convention then took up for consideration the majority and minority reports of the Committee on the Electoral Franchise.

MR. WADDILL moved to postpone the consideration of the reports, and moved to have the same printed for the use of this Convention, which motion was lost.

MR. BYRNE moved to take up as a substitute to the first Article, reported by the majority, the Article reported by the minority of said committee, which reads as follows, to-wit:

Article 10. Every free white male, who has attained the age of twenty-one years, and who has been a resident of the State twelve months next preceding the election, and the last six months thereof in the parish in which he offers to vote, and who shall be a citizen of the United States, shall have the right of voting. Electors shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to, or returning from elections.

MR. ARMANT moved to lay the above Article on the table.

On said motion, Mr. Moss called for the yeas and nays, which resulted as follows:

Messrs. Anderson of St. Landry, Akenhead, Anderson of Carroll, Armant, Bradford, Benjamin, Bernard, Brother, Boudousquie, Campbell, Collens, Conrad, Declouet, Dorsey, Douglass, Dufour, Duffel, Edwards of O., Edwards of Wash., Eggleston, Guion, Hays, Hodges, Jones, Key, King of St. Landry, Leeds, Lobdell, Lyle, McMillen, Mathews of Orleans, Martin, Mather, Olivier of St. Martin, Palfrey, Preaux, Pujo, Richardson of St. Mary, Roselius, Roman, Roysdon, St. Paul, Swazey, Smith of West Feliciana, Sibley, Tatman, Thibodaux and Thompson—48 yeas.

And Messrs. Addison, Beard, Bienvenu, Byrne, Castellanos, Carter, Cotton, Connely, Davidson, Delony, Dosson, Dugue, Eustis, Gardere, Hatch, Harris, Hargis, Herron, Hough, Hunt, Isaacks, Jennings, Jourdan, King of Jackson, Leefe, LeBlanc, McIlhenny, Mathews of Point Coupee, Moss, Monge, Nicholls, Parham, Paxton, Patterson, Price, Pierce, Reeves, Richardson of Ouachita, Ronquillo, Sandidge, Smart, Scarborough, Shelton, Smith of Winn, Stewart, Taliaferro, Todd, Villere, Waddill and Whittington—50 nays.

Consequently the said motion was lost, and the Convention refused to lay the Article on the table.

MR. SMART moved to strike out in the above article the following words: "twelve months" and "six months," and to insert in lieu thereof, the words "eight months," and "four months."

MR. TODD—It is well known that the tide of emigration to the State of Louisiana is now flowing rapidly, and that the great tide sets in during the winter months of January and February. Now, it will be perceived that if the term of twelve months be adopted as the prerequisite for voting, those who come among us to settle as citizens, will have to wait nearly two years before they will be entitled to vote. I cannot see what good is to be derived from a policy which will thus check emigration to our State, for check it such a law undoubtedly will. It is the highest pride of our institutions that our citizens duly appreciate the right of suffrage. Sir, we ought to keep in view that citizens coming from other States are reared under institutions as liberal as our own. It is our policy to show towards them no spirit of selfishness, even if a higher motive did not actuate us. It is natural for men, however, to look to the general interest of their own community, and their own State. Now, sir, you may be assured that if our Constitution is liberal to the emigrant, we shall make by it. We have a large body of lands to settle. Emigrants come to settle on and cultivate them. The moment they come among us, they are made to do the duties of citizens. They have to perform road duty, and military duty, and to pay taxes, and I cannot see the necessity of compelling them to remain two years in the State before they shall be entitled to vote.

MR. SMART—I would not have said a word on this question, at this time, but my worthy friend has overlooked the fact that elections in this State are held only once in two years; consequently a large portion of those setting in our State would have to wait nearly three years under the Article before they could avail themselves of a vote. They have, in the meantime, to do the duties of a *bona fide* citizen. Why should they not have the privileges? I hope that every man who desires to encourage emigration to this State—who desires to see us living in a state of enlightenment and civilization—who is a friend of the State and truly anxious for its prosperity, will vote for my amendment. I do not know what opposition I may meet with, but I give gentlemen fair warning that I shall call for the yeas and nays on this question, as I am determined that the people shall see who are in favor of giving to our new citizens, within a reasonable time, the right of suffrage and who are not.

MR. DUFOUR moved to lay the amendment on the table, which motion prevailed.

The following named delegates asked leave to have their votes recorded, on the motion of Mr. Dufour to lay on the table the amendment offered by Mr. Smart, which was ordered, and they voted in the negative, viz:

Messrs. Richardson, of O., Todd, Beard, Smart, Herron, Harris, King of J., Dawson, Parham, Addison, Isaacks, Waddill, Boyer, Cotton, Bienvenu, Eustis, Stewart, Sandidge, Van Wickle, Mathews of Point Coupee, Pierce, Scarborough, Villere, Whittington, Jourdan and Shelton.

MR. MARTIN moved to strike out "twelve months" and "six months" in the above Article, and to insert in lieu thereof the words "two years," and "one year," which motion was lost.

MR. TODD moved to strike out "twelve months" and to insert "nine months," and to strike out "six months" and to insert "three months."

On motion to lay the same on the table, the yeas and nays were called, and resulted as follows:

Messrs. Anderson of St. Landry, Akenhead, Andrews, Anderson of Carroll, Armant, Bradford, Benjamin, Bernard, Brother, Boudousquie, Byrne, Castellanos, Carter, Campbell, Collens, Connely, Conrad, Davidson, Delony, Declouet, Dorsey, Douglass, Dufour, Dugue, Duffel, Edwards of W., Eggleston, Gardere, Guion, Hatch, Hays, Hargis, Hough, Hodges, Hunt, Jennings, Jones, Key, King of St. Landry, Leefe, Leeds, LeBlanc, Lobdell, Lyle, McIlhenny, Mathews of Orleans, Martin, Mather, Monge, Nicholls, Olivier of St. Mary, Palfrey, Paxton, Patterson, Preaux, Price, Pearson, Pujo, Reeves, Richardson of St. Mary, Roselius, Roman, Roysden, St. Paul, Swazey, Smith of West Feliciana, Sibley, Tatman, Thibodaux and Thompson—70 yeas.

And Messrs. Addison, Beard, Bienvenu, Boyer, Cotton, Dosson, Edwards of Orleans, Eustis, Harris, Herron, Isaacks, Jourdan, King of Jackson, Mathews, McMillen of Point Coupee, Moss, Olivier of St. Martin, Parham, Pierce, Richardson of Ouachita, Ronquillo, Sandidge, Smart, Scarborough, Shelton, Smith of Winn, Stewart, Taliaferro, Todd, VanWickle, Villere, Waddill and Whittington—33 nays.

Consequently the motion prevailed, and the amendment was laid on the table.

MR. CARTER then offered the following proviso:

Provided, That no voter shall lose his right of voting in any parish until the same shall be acquired in another.

On motion the proviso was adopted.

MR. COLLENS moved to strike out the words "and who shall be a citizen of the United States," and to insert the following words: "who shall have been one year a citizen of the United States."

MR. SMART moved to lay the motion on the table.

Pending the consideration of the same—

On motion, the Convention adjourned until Monday morning at nine o'clock.

BELL DIVING IN LAKE ERIE.—It will be remembered that Mr. Maillefort, so distinguished in sub-marine enginery, has undertaken to raise the Express Company's safe in the steamer Atlantic, sunk upwards of one hundred and fifty feet below the surface at the bottom of Lake Erie. The first attempt was unsuccessful, from some fault in the diving apparatus. The second attempt was made and the vessel was reached, but from other circumstances nothing was accomplished towards commencing operations on the wreck. The Buffalo Commercial has been furnished with the following account of this essay. This is the deepest dive on record, and will be read with interest:

Notwithstanding the somewhat unfavorable condition of the weather and the roughness of the water, it was determined to make an attempt to reach the wreck on Saturday morning, 18th September, in order to test the capacity of the new hose.

Mr. Green, therefore, arrayed himself in the marine armor, and started on a second trip to the bottom of Lake Erie. He descended without any difficulty, and landed directly in the interior of the steamer's smoke pipe, the top and sides of which he felt with his feet and hands. He was then elevated again some little distance, and alighted the second time on the braces, following down until he got on to the cross braces. He did not, however, succeed in making a firm footing on deck, owing to the unsteadiness of the small steamer used on the occasion, which communicated too much motion to the hose and ropes.

There was much risk of the intrepid diver getting entangled in the ropes and wood work so as to be unable to extricate himself, or to tear the dress, and being again elevated he descended a third time alongside and clear of the wreck. He now went down fourteen feet below the upper deck and even with the guards, his head being one hundred and thirty-nine feet, and his feet one hundred and forty-four feet below the surface of Lake Erie. This is the deepest dive ever made, one hundred and twenty-six feet being the greatest depth ever before reached. The new hose was found to be perfectly successful; the diver felt quite at ease, and went down and up without the slightest injury to dress, pipes, or man.

The marine armor consists of a perfectly air-tight India rubber dress, topped by a copper helmet, with a clear, thick plate of glass in front. The pipes which supply and exhaust the air, lead from the top of this helmet. The pumping requires much labor; four and some times six men being employed upon it at the same time, and compelled to work hard at that. A great pressure of air is experienced by the diver upon his lungs, equal to 75 lbs. to the inch, and a very few individuals could bear it for any length of time.

When first going into the dress, the sensation of oppression is very overcoming, but passes away in a great measure after entering the water. When a depth of ten feet is reached in the descent, the dress becomes entirely emptied of air and collapsed to the body, causing a pressure all over the diver equal to the heft of a [illegible] pound weight, excepting as to the head, which is protected by the copper helmet. The difficulty in breathing now becomes great, a painful sensation is experienced by the diver, the jaws become distended, and the head seemingly splitting. This continues until after descending another ten or twelve feet, then the pain is relieved, the diver feels comfortable, and experiences no further inconvenience.

When about sixty feet below the surface, hundreds of the legitimate inhabitants of the water surround the diver, nibbling at their strange visitor as though he was "food for the fishes." After reaching seventy-five feet, all is perfectly dark—a black, impenetrable darkness—and an electric flame plays around the inside of the helmet, caused by the friction of the pump. At about one hundred and sixty feet the water is very cold, being in the present season within four or five degrees of freezing.

Mr. Maillefort has returned in order to obtain a larger steamer, and to wait for settled and calm weather before making another attempt. He has not the slightest doubt that the next effort will be crowned with success. Mr. Green the diver, has proved himself capable of doing the work effectually, and must rank as one of the first and most useful "under-water" men in the country. Two most excellent divers besides Mr. Green are in company with Mr. Maillefort. We shall look with much interest for the result of the next trial, but that it will be successful we have no doubt.