

San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto

By Dylan O. Drummond



The 570-foot-tall San Jacinto Monument stands guard over the San Jacinto Battleground. Photo courtesy of @Coach_Naivar, Twitter (March 12, 2017, 3:57 p.m.), https://twitter.com/Coach_Naivar/status/841030509551591425.

Some twenty-eight men served as either Chief Justice or Associate Judge of the Republic of Texas Supreme Court.¹ Yet only seven bled in the boggy marshes of San Jacinto to ensure that the Texas Supreme Court could someday be founded.² They ranged in rank at San Jacinto from Secretary of War to lowly private. Their number included the Court's first Chief Justice, the first Chief Justice to preside over a Court session and write an opinion, and the first judge in the Republic of Texas.

These seven San Jacinto jurists were Chief Justice James T. Collinsworth, Chief Justice Thomas J. Rusk, Associate Judge Edward T. Branch, Associate Judge Benjamin Cromwell Franklin, Associate Judge James W. Robinson, Associate Judge Richardson "Dick" Scurry, and Associate

¹ James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 290 (Dec. 1986).

² James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305, 306 (Dec. 1986).

Judge Robert McAlpin “Three-Legged Willie” Williamson.

The only common thread among the seven San Jacinto veterans who would later serve on the Supreme Court was their extraordinary service to Texas—both on the San Jacinto battlefield and afterwards in the halls of Republic government. They would serve five of the seven Republic judicial districts,³ and count two of the Republic Supreme Court’s four Chief Justices among their number. Four of the seven San Jacinto jurists now have Texas counties named after them.⁴

While only sixteen of the twenty-eight judges who served Republic Supreme Court actually wrote Supreme Court opinions, far fewer San Jacinto jurists did.⁵ In fact, only Chief Justice Thomas J. Rusk and Associate Judge Richardson A. “Dick” Scurry ever authored any Supreme Court opinions at all. Combined, they issued eight decisions (five by Chief Justice Rusk and three by Associate Judge Scurry).⁶ In addition, only four of the San Jacinto jurists ever actually attended a Court session—Chief Justice Rusk, and Associate Judges Branch, Robinson, and Scurry.⁷ And sadly, as we will see, two of San Jacinto jurists took their own lives.

Each of the remarkable men who helped free Texas from Santa Anna’s grip at San Jacinto later ensured that liberty would be enjoyed by her citizens through their devoted service to her courts. Their valor on the battlefield and wisdom in the courtroom cemented the Texas Supreme Court’s lineage and legacy that continues to this day.

Structure of the Republic Supreme Court

The Republic Supreme Court was quite unlike its state successor. Indeed, the Republic “had no permanent supreme court”⁸ at all. By virtue of the Republic Constitution, all elected district judges were made *ex officio* Associate Judges of the Supreme Court automatically.⁹ That is, the Republic Supreme Court “was a temporary committee composed of the district judges,

³ See Appendix B: *Dates of Service for Chief Justices and Associate Judges, Supreme Court of the Republic of Texas*, in Paulsen, *Supreme Court Judges*, 370–71 [hereinafter Paulsen, *Dates of Service*].

⁴ Collingsworth County was established in 1876 in Chief Justice James Collinsworth’s honor. Paulsen, *Supreme Court Judges*, 311. Rusk County, named after Chief Justice Rusk, was created in 1843. *Ibid.*, 317. Franklin County is thought to have been named for Associate Judge Franklin. *Ibid.*, 333, 333 n.192. Williamson County was established in 1848 and named for Associate Judge Williamson. *Ibid.*, 364.

⁵ Compare Paulsen, *Short History*, 243–44 n.29, with James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 20, 30.

⁶ Haley, *Texas Supreme Court*, 20, 30.

⁷ *Ibid.*, 20, 34, 235; James W. Paulsen, *A Sesquicentennial Celebration: The Establishment of a Unique Texas Institution*, 53 TEX. B.J. 43, 43 (Jan. 1990); Paulsen, *Supreme Court Judges*, 313–14, 316; Daffin Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 435, 449–50 (1934).

⁸ Paulsen, *Short History*, 241.

⁹ *Ibid.* (citing TEX. CONST. art. IV, § 7 (1836), “The Supreme Court shall consist of a Chief Justice and Associate Judges, the District Judges shall compose the Associate Judges, a majority of whom, with the Chief Justice, shall constitute a quorum.”), 307 nn.4, 5; see Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University Press, 2011), 16; Clarence Wharton, *Early Judicial History of Texas*, 12 TEX. L. REV. 311, 323 (Apr. 1934); F.A. Williams, *Suggestions for Improving Court Procedure in Texas*, 5 TEX. L. REV. 174, 174 (1927); J.H. Davenport, *The History of the Supreme Court of the State of Texas* (Austin: Southern Law Book Publishers, 1917), 7, 16.

presided over by a permanent Chief Justice.”¹⁰

Several months after the adoption of the Republic Constitution on March 17, 1836, the first Congress of the Republic passed legislation that implemented Article IV’s mandate to establish a judicial branch, and formally created the Supreme Court on December 15, 1836.¹¹ Congress set the Supreme Court’s term to begin annually on the first Monday in December and be held at the seat of the Republic government.¹² The following day, Congress elected the Court’s first Chief Justice—San Jacinto veteran James Collinsworth¹³—as well as four Associate Judges drawn from the district courts.¹⁴ Three of these first four Associate Judges were San Jacinto veterans: Benjamin C. Franklin, James W. Robinson, and Robert McAlpin “Three-Legged Willie” Williamson.¹⁵

The Republic Constitution provided that the Congress was to establish no fewer than three, but no more than eight, judicial districts.¹⁶ Initially, there were four district courts covering the Republic’s twenty-two counties.¹⁷ The First Judicial District was massive. Its boundaries formed an “irregular wedge of northern and eastern Texas, along the Red River from Louisiana west to the Indian frontier, and south along the Sabine [River] almost to the coast.” The Second Judicial District was much smaller, forming a “block in the more thickly settled counties along the coast in the heart of the original Anglo colonies.” The Third Judicial District was situated “interior to the [S]econd and stretched northwest to the Indian frontier.” The Fourth Judicial District was comprised of “the coastal bend and brush country from San Antonio to the Rio Grande.”¹⁸

In May 1838, the number of judicial districts was increased to five,¹⁹ and increased again to seven in January 1840.²⁰ Both the Republic Constitution and Congress required district judges to permanently reside within their districts.²¹ The judges themselves were elected by a joint

¹⁰ Paulsen, *Short History*, 241; Wharton, *Early Judicial History*, 323; Williams, *Improving Court Procedure*, 174.

¹¹ Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in 1 H.P.N. Gammel, *Laws of Texas 1822–1897*, at 1139 (Austin, Gammel Book Co. 1898); Haley, *Texas Supreme Court*, 19, App’x A, 227; Ariens, *Lone Star Law*, 15–16; Davenport, *Supreme Court History*, 7.

¹² Haley, *Texas Supreme Court*, 33; see TEX. CONST. art. IV, § 8 (1836).

¹³ Paulsen, *Supreme Court Judges*, 308; Paulsen, *Dates of Service*, 370; Gilmer, *Early Courts*, 448; Lynch, *Bench and Bar*, 64; see Haley, *Texas Supreme Court*, 235.

¹⁴ Compare TEX. CONST. art. IV, §§ 1, 7 (1836), with Act of Dec. 22, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1258; Haley, *Texas Supreme Court*, 19, 235, App’x A, 227; Ariens, *Lone Star Law*, 19; Davenport, *Supreme Court History*, 16–17.

¹⁵ Haley, *Texas Supreme Court*, 34, 235; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Dates of Service*, 370–71; Gilmer, *Early Courts*, 448; Davenport, *Supreme Court History*, 16–17.

¹⁶ TEX. CONST. art. IV, § 2 (1836); Williams, *Improving Court Procedure*, 174; Davenport, *Supreme Court History*, 7.

¹⁷ Paulsen, *Short History*, 241 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1258); see Ariens, *Lone Star Law*, 19.

¹⁸ Haley, *Texas Supreme Court*, 33.

¹⁹ Paulsen, *Short History*, 241 (citing Act of May 24, 1838, 2d Cong., R.S., §§ 1, 6, reprinted in 1 Gammel, *Laws of Texas*, 1500, 1502).

²⁰ *Ibid.* (citing Act of Jan. 29, 1840, 4th Cong., R.S., § 1, reprinted in 2 Gammel, *Laws of Texas*, 350, 350–51); see Ariens, *Lone Star Law*, 19.

²¹ Paulsen, *Short History*, 245 (citing Tex. Const. art. IV, § 2 (1836) and Act of Dec. 14, 1837, 2d Cong., R.S., reprinted in 1 Gammel, *Laws of Texas*, 1400); Davenport, *Supreme Court History*, 7.

ballot of both houses of the Republic Congress.²²

Because these judges served dual constitutional roles as both district judges and Supreme Court Associate Judges, each had to split his time between his district and Supreme Court duties.²³ The first statutes of the Republic required Associate Judges to convene their district courts on various days in March, April, and October.²⁴ As a result, Associate Judges would “ride the circuit” as a district judge during the spring and fall of the year to hold court throughout the counties within their district.²⁵

This “annual migration” was an arduous one in frontier Texas.²⁶ During the spring, Associate Judges were forced to “ride through torrential rains, ford swollen streams, and take lodgings with any settler whose dwelling might afford them shelter from a storm.”²⁷ What reference materials an Associate Judge possessed were often limited by what he could fit in his saddlebags.²⁸

That left the winter or summer for Associate Judges to meet and adjudicate appeals brought before the Supreme Court, the annual term of which was originally mandated by Congress to begin the first Monday of December.²⁹ Between the two, Associate Judges spent much more time overseeing their districts than they did hearing appeals before the Republic Supreme Court.³⁰

In fact, due in part to the crushing caseload, some Associate Judges prioritized riding their circuit over attending en banc Supreme Court sessions.³¹ Faced with a docket of 100 continued cases and 300 new ones, Judge Anthony B. Shelby even publicly announced that he would remain on his district court bench until the docket was clear and ignore the statutory mandate to attend a Supreme Court session.³² Other Associate Judges simply found it impossible to travel to the Republic capital to convene a session of the Supreme Court.³³

The stature of the Supreme Court relative to the district courts was further evidenced by the Republic Congress’s penchant for granting leaves of absence to Associate Judges only during Supreme Court sessions instead of district court ones.³⁴ Indeed, as noted earlier, only sixteen of

²² TEX. CONST. art. IV, § 9 (1836); Davenport, *Supreme Court History*, 7–8.

²³ Paulsen, *Short History*, 241, 243.

²⁴ *Ibid.*, 241, 245 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 2, reprinted in 1 Gammel, *Laws of Texas*, 1258, 1258–59); see TEX. CONST. art. IV, § 2 (1836).

²⁵ Paulsen, *Short History*, 241, 245; see Haley, *Texas Supreme Court*, 33.

²⁶ Paulsen, *Short History*, 245.

²⁷ *Ibid.* (quoting Duncan W. Robinson, *Judge Robert McAlpin Williamson: Texas’ Three-Legged Willie* (Austin: Texas State Historical Association, 1948), 155).

²⁸ *Ibid.*, 245, 270.

²⁹ *Ibid.*, 241, 245; see Haley, *Texas Supreme Court*, 33.

³⁰ Paulsen, *Short History*, 243.

³¹ *Ibid.* (citing Robinson, *Three-Legged Willie*, 151); see Haley, *Texas Supreme Court*, 33.

³² See Paulsen, *Short History*, 243.

³³ See *ibid.*

³⁴ *Ibid.*; see, e.g., Act of Jan. 16, 1843, 7th Cong., R.S., § 3, reprinted in 2 Gammel, *Laws of Texas*, 858, 859 (granting

the twenty-eight judges who served actually wrote Supreme Court opinions.³⁵

The challenge the Republic Supreme Court faced of convening a quorum was also complicated by the fact that the Constitution barred an Associate Judge from sitting in a case he tried below at the district court.³⁶ The practical effect of this restriction was that even fewer Associate Judges were available to attempt to attend a Supreme Court session.

Where the Republic Supreme Court was supposed to meet was also an issue that frustrated its early ability to function. Between independence on April 21, 1836, and convening in Houston on April 16, 1837, the Republic government was constituted at no less than six locations: Washington-on-the-Brazos, Harrisburg, Galveston, San Jacinto, Velasco, and Columbia.³⁷ Following that, the seat of government moved to Austin in 1839, back to Washington-on-the-Brazos in 1842, and then subsequently back again to Austin for good.³⁸

All these factors combined to prevent the Republic Supreme Court from actually convening its first session until January 13, 1840—just over *three years* after it was created in December 1836.³⁹ The *Austin City Gazette* commemorated the occasion two days later on January 15, 1840, writing, “We congratulate the country on the commencement of a new era in the judicial annals of this Republic; we allude to the opening of the Supreme Court, and the commencement of its first session.”⁴⁰

This multi-year delay can be attributed to several different specific causes. The Supreme Court’s first scheduled session at Houston in December 1837 was canceled when a quorum could not be formed.⁴¹ Because there were only four Associate Judges at the time of the first scheduled session, the failure of any two of them to attend would have denied the Supreme Court a quorum.⁴² Because the Republic Congress moved the Supreme Court’s session date from the first

Judge John T. Mills a leave of absence to visit the United States during his district court’s summer recess and the June 1843 term of the Supreme Court).

³⁵ Paulsen, *Short History*, 243–44 n.29.

³⁶ TEX. CONST. art. IV, § 8 (1836); Ariens, *Lone Star Law*, 16.

³⁷ Jeffrey S. Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* (Lubbock: Texas Tech University Press, 2013), 13, 224 n.10.

³⁸ Haley, *Texas Supreme Court*, 33; Paulsen, *Short History*, 289–90 (citing Act of Feb. 3, 1842, 6th Cong., R.S., § 1, reprinted in 2 Gammel, *Laws of Texas*, 766; and Act of Feb. 3, 1845, 9th Cong., R.S., reprinted in 2 Gammel, *Laws of Texas*, 1162).

³⁹ Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in Gammel, *Laws of Texas*, 1139); Haley, *Texas Supreme Court*, 18–19, App’x A, 227; Ariens, *Lone Star Law*, 15–16, 19–20; Paulsen, *Short History*, 248–49; Davenport, *Supreme Court History*, 7.

⁴⁰ *Austin City Gazette*, Jan. 15, 1840, p. 2, col. 4.

⁴¹ Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 249.

⁴² Paulsen, *Short History*, 249. Within two weeks of the Supreme Court’s failure to convene its first session, the Republic Congress passed a law subjecting an absent Associate Judge to a fine of \$1,000 and exposure to civil damages arising from the inconvenience suffered by litigants. *Ibid.* (citing Act of Dec. 14, 1837, 2d Cong., R.S., reprinted in 1 Gammel, *Laws of Texas*, 1400); see Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43. This penalty was not inconsequential as the annual salary of Associate Judges was just \$3,000. Paulsen, *Short History*, 265 (citing Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1139).

Undated painting by William Sandusky depicting the City of Austin in 1839, looking west as viewed from President's Hill, bounded by San Jacinto Boulevard and Brazos, Seventh, and Eighth Streets. Photo courtesy of University of North Texas Libraries, Portal to Texas History, crediting Austin History Center, Austin Public Library.



Monday in December to the second Monday in January, the Court did not convene at all in 1838.⁴³ Finally, no Supreme Court session was held in 1839 because the newly elected Chief Justice,⁴⁴ San Jacinto veteran Thomas J. Rusk, was leading military campaigns against the Cherokee, Kickapoo, and Caddo Indian tribes.⁴⁵ As a result, Chief Justice Rusk did not even learn of his election until January 21, 1839, one week after the date the Court was scheduled to convene.⁴⁶

But having now had a full year's notice of his election, Chief Justice Rusk dutifully presided over the Republic Supreme Court's first term in January 1840 at Austin, convened in the home of Major Asa Brigham—then the Treasurer of the Republic and future Mayor of Austin.⁴⁷

San Jacinto Jurists

Chief Justice James Collinsworth

"First Chief Justice of the Republic of Texas" was just one of several titles James Collinsworth⁴⁸

⁴³ Haley, *Texas Supreme Court*, 34; Paulsen, *Sesquicentennial Celebration*, 43.

⁴⁴ President Sam Houston appointed John Birdsall (Houston's future law partner) as the Supreme Court's interim Chief Justice, but the Republic Congress refused to confirm him, and there was considerable doubt as to whether Houston even possessed the power to appoint a Chief Justice under the Republic Constitution. Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43. Instead, Texas Revolution Secretary of War and San Jacinto veteran Thomas J. Rusk was elected by Congress as Chief Justice—albeit on the *seventeenth* ballot. Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 316.

⁴⁵ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

⁴⁶ See Haley, *Texas Supreme Court*, 258 n.13; Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

⁴⁷ Paulsen, *Sesquicentennial Celebration*, 43. Major Brigham's residence was located on what is now the southwest corner of Congress Avenue and Second Street.

⁴⁸ Chief Justice Collinsworth's name appears both with and without a "g" (i.e., "Collingsworth"). While the State of Texas later memorialized Collinsworth in 1876 by naming Collingsworth County in his honor, Chief Justice



Drawing of James Collinsworth by Anne Stubbs, Ocie Speers's daughter. Courtesy of Tarlton Law Library, Texas Jurists Collection.

held during his remarkable tenure in 1830s Texas.⁴⁹ He also served as Republic Secretary of State and Senator, and signed both the Texas Declaration of Independence and the Republic Constitution.⁵⁰ But before he assumed these posts, Collinsworth was a major and aide-de-camp to General Houston at the Battle of San Jacinto.⁵¹

Collinsworth was a native Tennessean born in 1806, who began practicing law at the age of 20 around 1826.⁵² During this time, one of his good friends was future United States President James K. Polk,⁵³ who appointed him U.S. District Attorney for the Western District of Tennessee in 1830. Collinsworth later declined reappointment and made his way to Texas between 1834 and 1835.⁵⁴

As a delegate to the March 1836 Constitutional Convention at Washington-on-the-Brazos, and Chair of the Military Affairs Committee, Collinsworth introduced the resolution urging Sam Houston's appointment as Commander-in-Chief of the Texian army.⁵⁵ From mid-March to early April, as Military Affairs Committee Chair, Collinsworth received direct reports from General Houston and other battlefield commanders in the Texian army.⁵⁶

Cureton and the Texas Supreme Court chose to omit the "g" in the presentation of his portrait to the Court. Haley, *Texas Supreme Court*, 258 n.7 (citing *In Memoriam*, 126 Tex. xxxi); Paulsen, *Supreme Court Judges*, 311 n.28. His own signature on no less than the Texas Declaration of Independence also omits the "g" in his last name. TEX. DECLARATION OF INDEP. at 9 (Mar. 2, 1836), available at <https://www.tsl.texas.gov/treasures/republic/odeclar-09.html> (last modified Mar. 7, 2016). This article follows both the Texas Supreme Court's and Chief Justice Collinsworth's own spelling convention. **Ed. note:** See James Paulsen's article in this issue of the *Journal*, p. 84, for a current discussion about Collinsworth's name.

⁴⁹ See Haley, *Texas Supreme Court*, 19; Paulsen, *Supreme Court Judges*, 308.

⁵⁰ Paulsen, *Supreme Court Judges*, 310; Davenport, *Supreme Court History*, 7.

⁵¹ Haley, *Texas Supreme Court*, 19; Moore, *Eighteen Minutes*, 435; Paulsen, *Supreme Court Judges*, 310.

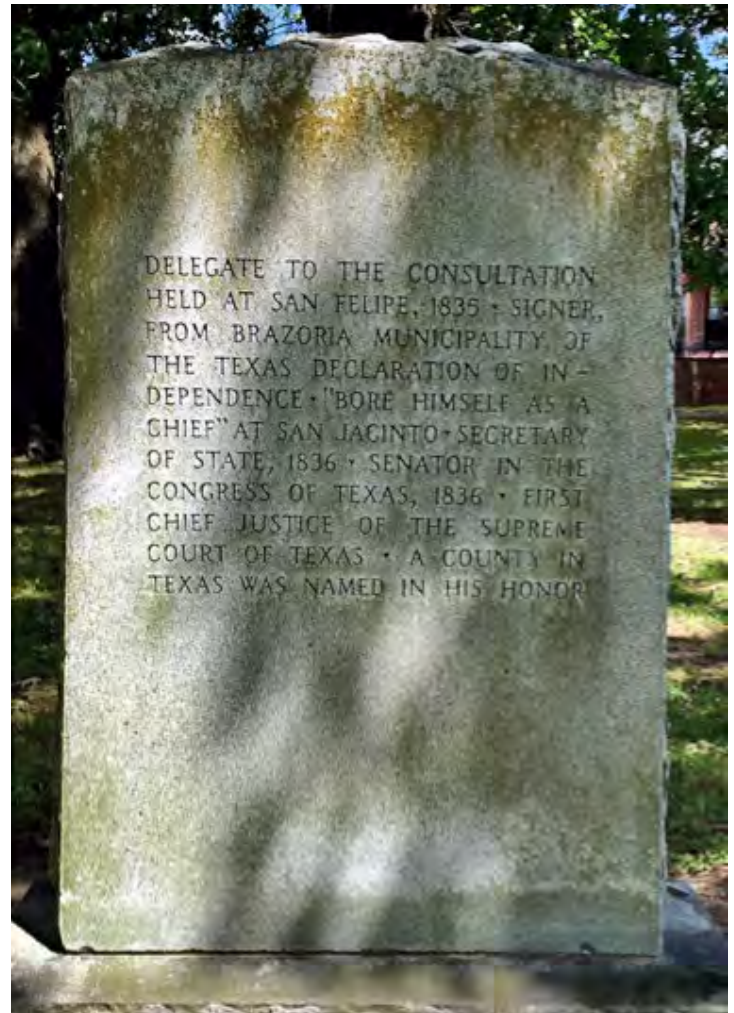
⁵² Paulsen, *Supreme Court Judges*, 308.

⁵³ President Polk would later sign a joint resolution of the U.S. Congress recognizing the admission of Texas as a State of the Union on December 29, 1845. See Ralph H. Brock, *"The Republic of Texas is No More:" An Answer to the Claim That Texas Was Unconstitutionally Annexed to the United States*, 28 TEX. TECH L. REV. 679, 692-93 (1997). This December 29, 1845 date has also been recognized by the United States Supreme Court as the date upon which Texas was admitted into the Union. See *E.P. Calkin & Co. v. Cocke*, 55 U.S. 227, 235-36 (1852) (clarifying that, on that date, "Texas was admitted into the Union," and from that day "the laws of the United States were declared to be extended over, and to have full force and effect within, the State," so that "the old system of [Republic] government, so far as it conflicted with the federal authority, became abrogated immediately on her admission as a State"), *overruling*, *Cocke v. E.P. Calkin & Co.*, 1 Tex. 542, 560 (1846) (holding that certain sections of article 13 of the newly ratified state constitution postponed the operation of the laws of the Union until such time as a state government was organized on February 16, 1846).

⁵⁴ Paulsen, *Supreme Court Judges*, 308, 310.

⁵⁵ Haley, *Texas Supreme Court*, 19; Paulsen, *Supreme Court Judges*, 310.

⁵⁶ Davenport, *Supreme Court History*, 9; see Moore, *Eighteen Minutes*, 72, 74.



James Collinsworth's cenotaph, Founders Memorial Cemetery, Houston. Photos by David A. Furlow.

By April 8, 1836, Collinsworth had arrived at the Texian army training encampment near Groce's Landing, roughly halfway between Washington-on-the-Brazos and San Felipe on the western bank of the Brazos River.⁵⁷ He was now a major in General Houston's command staff, and his aide-de-camp.⁵⁸

Around this same time, future San Jacinto jurist Robert "Three-Legged Willie" Williamson also held the rank of major and was in command of a regiment of Texas Rangers. Upon learning that drunken Rangers under Williamson's command had killed two Mexican prisoners, General Houston and future San Jacinto jurist Secretary of War Thomas J. Rusk relieved Williamson of command and handed his Ranger regiment over to Collinsworth. Houston had wanted to question the prisoners.⁵⁹

Little is known about Collinsworth's specific involvement in the Battle of San Jacinto,⁶⁰ but

⁵⁷ *Eighteen Minutes*, 125, 166.

⁵⁸ *Ibid.*, 166, 180.

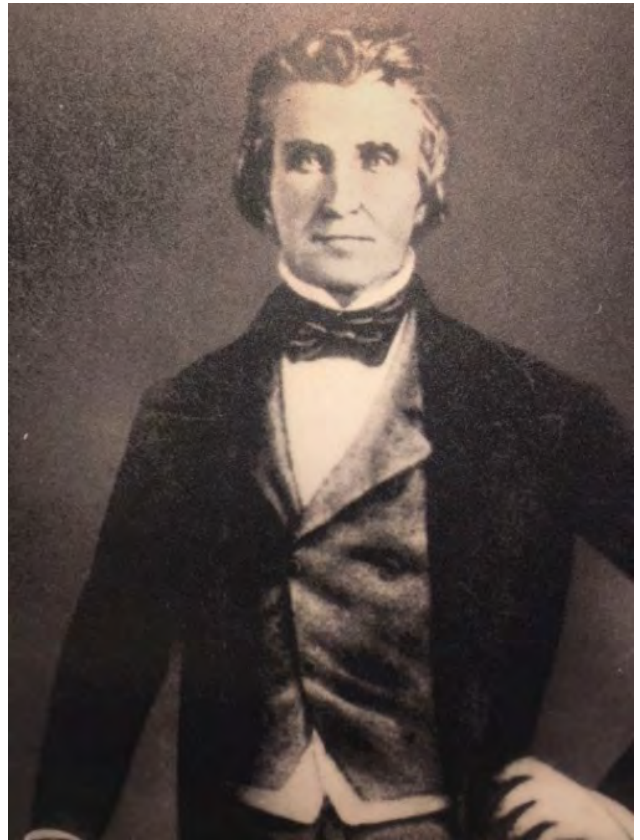
⁵⁹ *Ibid.*, 180.

⁶⁰ *See ibid.*, 435.

Rusk went out of his way to praise Collinsworth's valor on the battlefield in a report to Interim President David G. Burnet:

While I do justice to all in expressing my high admiration of the bravery and gallant conduct of both officers and men, I hope I may be indulged in the expression of my highest approbation of the chivalrous conduct of Major James Collinsworth in almost every part of the engagement.⁶¹

Following the victory at San Jacinto, Collinsworth served in several distinguished posts in the Republic government. Prior to his election as the first Chief Justice of the Republic Supreme Court on December 16, 1836,⁶² he turned down the request of interim President David G. Burnet earlier that spring to serve as the Republic's first judge.⁶³ Collinsworth declined, and Burnet appointed instead fellow San Jacinto jurist Benjamin C. Franklin.



"Three-Legged Willie" Williamson, photo on display at San Felipe de Austin Museum, April 27, 2018. Photo by David A. Furlow.

Though he was the first Chief Justice, Collinsworth never presided over the Court he led, nor authored a single opinion from its bench.⁶⁴ Of this irony, Floride Peterson compared Collinsworth to George Washington:

[I]t is said [that Washington] "was childless so that he may be called the father of his Country." So, it may be said, *Collinsworth never wrote an opinion that he may be called the father of our judiciary.*⁶⁵

The Court never convened its first scheduled session in December 1837 because no quorum could be formed.⁶⁶ And before the Court could meet the following year, Chief Justice Collinsworth drowned in Galveston Bay, likely by his own hand, on July 11, 1838.⁶⁷ Some amount

⁶¹ Paulsen, *Supreme Court Judges*, 310 (quoting *In Memoriam*, 126 Tex. xxxi); see Davenport, *Supreme Court History*, 9.

⁶² Paulsen, *Supreme Court Judges*, 308; Paulsen, *Dates of Service*, 370; Gilmer, *Early Courts*, 448; Lynch, *Bench and Bar*, 64; see Haley, *Texas Supreme Court*, 235.

⁶³ Hon. Ken Wise, "Judge Benjamin Franklin Cromwell: First Republic Judge," *Journal of the Texas Supreme Court Historical Society* (Spring 2016): 16; Paulsen, *Supreme Court Judges*, 332 n.188; Wharton, *Early Judicial History*, 321-23; see Lynch, *Bench and Bar*, 173.

⁶⁴ Paulsen, *Supreme Court Judges*, 308.

⁶⁵ *Ibid.* (quoting *In Memoriam*, 126 Tex. xxxi) (emphasis added).

⁶⁶ Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 249.

⁶⁷ Haley, *Texas Supreme Court*, 19; Ariens, *Lone Star Law*, 19; Moore, *Eighteen Minutes*, 422; Paulsen, *Sesquicentennial*



The San Jacinto diorama at the Bryan Museum in Galveston shows the first line of Texian troops sweeping across the Mexican breastworks into Santa Anna's camp, followed by rapidly advancing second line of Texian troops. Photo by David A. Furlow.

of melancholy, perhaps magnified by what he witnessed or even did at San Jacinto, had followed Collinsworth the rest of his days.⁶⁸ He was known to treat his mood with drink.⁶⁹ His ill-fated campaign for Republic President in 1838 (while Chief Justice) against then-Vice President Mirabeau B. Lamar and Attorney General Peter W. Grayson did not help.⁷⁰ Because Collinsworth was President Houston's chosen successor, he faced the full and bitter brunt of the enmity of supporters of Houston's political enemy, Lamar.⁷¹ "Calumnies of the most appalling sort were hurled."⁷²

State District Judge A.W. Terrell later described Collinsworth as:

[A] lawyer of distinguished ability who preferred to settle his clients' troubles out of court where it was possible. He despised long drawn out litigation.... His mind was a storehouse of legal opinions and his knowledge of common law practice was marvelous.⁷³

Celebration, 43; Paulsen, *Short History*, 250 n.74; Paulsen, *Supreme Court Judges*, 310; Gilmer, *Early Courts*, 449; Davenport, *Supreme Court History*, 10; Lynch, *Bench and Bar*, 64.

⁶⁸ See Haley, *Texas Supreme Court*, 19.

⁶⁹ *Ibid.*; Davenport, *Supreme Court History*, 10 n.1.

⁷⁰ Paulsen, *Short History*, 250; Davenport, *Supreme Court History*, 9–10.

⁷¹ Paulsen, *Short History*, 250.

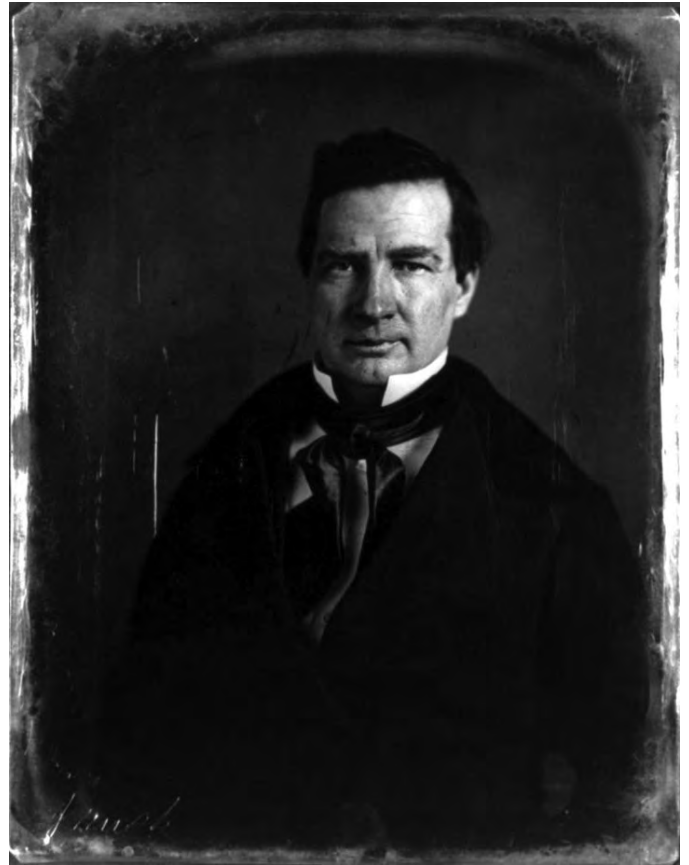
⁷² *Ibid.*

⁷³ *Ibid.*; Paulsen, *Supreme Court Judges*, 311. No doubt Chief Justice Collinsworth's extensive common-law knowledge was fed by his large law library, consisting of some 175 volumes. Haley, *Texas Supreme Court*, 19.

Chief Justice Thomas J. Rusk

Although Thomas J. Rusk was the *third* Chief Justice of Republic, he was the *first* to preside over a session of the Supreme Court and author an opinion.⁷⁴ If anyone's feats at San Jacinto matched their later judicial service, it was Rusk, who was Secretary of War and led the charge at San Jacinto that routed Santa Anna's army after General Sam Houston was wounded.⁷⁵

Rusk was born on December 5, 1803 in the Pendleton District of South Carolina.⁷⁶ His family lived in a house owned by the future Vice-President of the United States, John C. Calhoun. Calhoun encouraged Rusk's study of the law, procuring for him a position in the office of the district clerk, even lending him law books to study. After being admitted to the South Carolina Bar at the age of twenty-nine, Rusk wed and began his law practice in Clarksville. However, he soon fell prey to embezzlers in a gold-mining scheme, who fled to Texas. Rusk doggedly pursued the criminals, arriving in Nacogdoches, where he decided to settle.⁷⁷



Thomas J. Rusk. Wikimedia Commons

Rusk was quickly drawn up into the Texians' fight for freedom, organizing a company of Nacogdoches volunteers in 1835, and serving as a Colonel at the Siege of Bexar.⁷⁸ Soon thereafter, Rusk served as Nacogdoches's delegate to the Constitutional Convention in March 1836, signing both the Texas Declaration of Independence and Republic Constitution.⁷⁹ On March 16, 1836, he was elected Secretary of War, and was sworn-in the following morning at 4:00 a.m.⁸⁰

Although Rusk possessed the power to take command of the Texan army if he wished as Secretary of War, he chose instead to support General Houston, an indication of his strength of character.⁸¹

⁷⁴ Haley, *Texas Supreme Court*, 20; Paulsen, *Supreme Court Judges*, 313–14, 316.

⁷⁵ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 314; see Gilmer, *Early Courts*, 449.

⁷⁶ Ariens, *Lone Star Law*, 19; Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 10; Lynch, *Bench and Bar*, 65.

⁷⁷ Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 11; Lynch, *Bench and Bar*, 65.

⁷⁸ Haley, *Texas Supreme Court*, 258 n.12; Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 11–12; Lynch, *Bench and Bar*, 66.

⁷⁹ Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; see Lynch, *Bench and Bar*, 66.

⁸⁰ Moore, *Eighteen Minutes*, 77–78; Davenport, *Supreme Court History*, 12.

⁸¹ Moore, *Eighteen Minutes*, 169.

Rusk oversaw the burial of Fannin and his men who were slaughtered at Goliad.⁸² After the dead had been gathered and properly interred, Rusk:

[D]elivered over them an oration, which, in eloquence and pathos was unsurpassed by that of Pericles over those who fell in the Samian war.... It is said that many a rough and hardy soldier, whose eyes had never since childhood been wet with the waters of sorrow and sympathy shed copious tears that day....⁸³

On April 13, 1836, Rusk strongly implored Texians to take up the cause of liberty against the invading Mexican forces:

Will you desert the principles of liberty? You entail upon yourselves and your children eternal infamy and disgrace, if you will not march at once to the field, join the army now on the line of march to meet the enemy, and conquer him, or die nobly in the cause of liberty and their country.⁸⁴

Two days before the Battle of San Jacinto on April 19, 1836, Rusk issued another stirring address to the people of Texas, calling them again to arms:

A few more hours will decide the fate of our army; and what an astonishing fact it is that, at the very moment when the fate of your wives, your children, your honors, your country, and all that is dear to a freeman are suspended on the issue of one battle, not one-fourth of the people (men) of Texas are in the army! Are you Americans? Are you freemen? If you are, prove your blood and birth by rallying at once to your country's standard. Your general is at the head of a brave and chivalrous band, and throws himself, sword in hand, into the breach to save his country, and vindicate her rights.... Rise at once, concentrate and march to the field!—a vigorous effort, and the country is safe! A different course disgraces and ruins you; and what is life worth with the loss of liberty? May I never survive it!⁸⁵

It was said that the "heroic conduct of Secretary Rusk in the battle of San Jacinto was excelled by none who participated in that important engagement."⁸⁶ During the early afternoon of April 21, 1836, Rusk joined Captain Juan Seguin at his campfire to inquire about the habits of the Mexican *soldados*.⁸⁷ It was Seguin who informed Rusk that the Mexican soldiers were likely to take a siesta that fateful afternoon.⁸⁸

⁸² Lynch, *Bench and Bar*, 66.

⁸³ *Ibid.*

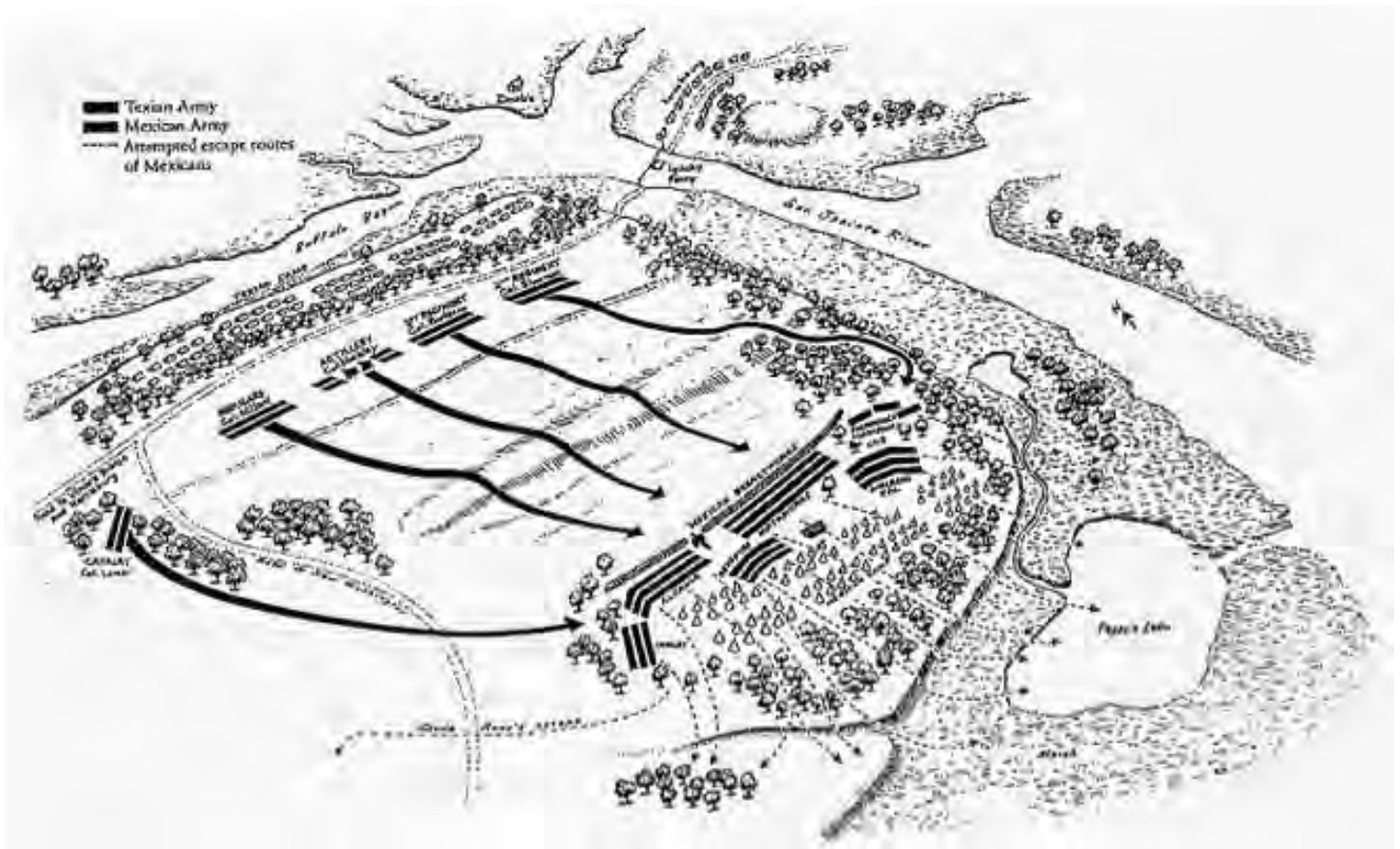
⁸⁴ *Ibid.*, 209.

⁸⁵ Davenport, *Supreme Court History*, 12 n.1; see Moore, *Eighteen Minutes*, 248.

⁸⁶ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 314; see Gilmer, *Early Courts*, 449; Davenport, *Supreme Court History*, 12 n.1.

⁸⁷ Moore, *Eighteen Minutes*, 309. Seguin was one of the last people to escape the Alamo on February 25, 1836, taking with him one of Travis's pleas to Colonel Fannin for reinforcements. James Donovan, *The Blood of Heroes: The 13-Day Struggle for the Alamo—and the Sacrifice That Forged a Nation* (New York: Little, Brown, and Co., 2012), 219–20.

⁸⁸ Moore, *Eighteen Minutes*, 309.



Above: Four columns of Texian troops advancing to the sound of “Remember the Alamo” and “Remember Goliad.” *Handbook of Texas Online*, map courtesy of Stephen L. Hardin and the University of Texas Press.
 Below: Close-up of the San Jacinto Battle diorama at the Bryan Museum shows Texian troops crossing over the Mexican breastworks. Photo by David A. Furlow.



As the Texian columns advanced towards the Mexican forces once the battle began, Rusk observed that cries rose up from his men—“Remember the Alamo! Remember La Bahia!”⁸⁹ “These words,” Rusk remarked, “electrified all.”⁹⁰

As Rusk later rode across the battlefield to report to General Houston, the General’s horse was felled by grapeshot from Santa Anna’s nine-pound cannon, dubbed the “Golden Standard.”⁹¹ The Mexican army began to be overrun by the Texian advance, and General Houston was wounded in the ankle by a brass musket ball near the Mexican breastworks.⁹² Seeing that the Texian troops were in danger of halting their advance after watching Houston fall, Rusk rode forward and cried, “If we stop we are cut to pieces. Don’t stop—go ahead—give them hell,”⁹³ “Push on boys, push on!”⁹⁴ Rusk’s mission at San Jacinto was later described as “to *win* the laurels of that day, and for the other men to *wear* them.”⁹⁵



Henry McArdle’s *Battle of San Jacinto* (1895). Image courtesy of the Texas State Library and Archives.

⁸⁹ *Ibid.*, 321 (emphasis added).

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, 321–22.

⁹² *Ibid.*, 338–39.

⁹³ *Ibid.*, 340.

⁹⁴ Davenport, *Supreme Court History*, 12–13 n.1.

⁹⁵ *Ibid.*



Above left: Sam Houston on horseback, painting by S. Seymour Thomas in the San Jacinto Battlefield Museum. Above right: Historical marker where Mexican fire wounded Sam Houston and killed his horse under him. Photos by David A. Furlow.

Following the battle, when Santa Anna was brought before General Houston after his capture, Rusk interrogated the deposed dictator. Rusk demanded to know what excuse Santa Anna had for the Alamo massacre. Santa Anna coolly replied that it was customary to “put all to the sword” when a smaller force refused to surrender to and inflicted many casualties upon a superior force.⁹⁶

Santa Anna’s calm pretense soon withered under the intensity of Houston and Rusk’s interrogation—so much so that Santa Anna asked for and was permitted to take a quick dose of the opium the Texians had recovered from his personal effects.⁹⁷

Rusk completed his official report of the San Jacinto battle by April 23, 1836, and enlisted future fellow San Jacinto jurist Benjamin C. Franklin to deliver it to Interim President David G. Burnet.⁹⁸ In it, he wrote, “It was freemen fighting against the minions of tyranny, and the result proved the inequality of such a contest.”⁹⁹

Following San Jacinto, Rusk was elevated to General and Commander-in-Chief of the

⁹⁶ Moore, *Eighteen Minutes*, 384

⁹⁷ *Ibid.*, 385.

⁹⁸ Wise, *First Republic Judge*, 14; Moore, *Eighteen Minutes*, 388, 481 n.20; see Paulsen, *Supreme Court Judges*, 332.

⁹⁹ Moore, *Eighteen Minutes*, 411.



Surrender of Santa Anna, by William Henry Huddle, hangs in the Texas State Capitol.
Image courtesy of Wikimedia Commons.

Texan forces while Sam Houston recovered from his ankle injury.¹⁰⁰ During the fall of 1836, Rusk was named the Republic's Secretary of War in now-President Houston's cabinet, but he resigned after a few weeks to return his attention to his long-neglected private affairs.¹⁰¹ He soon returned to public life, though, being elected from Nacogdoches to a seat in the Second Republic Congress in 1837.¹⁰²

Rusk was elected by a joint ballot of the Republic Congress as the Supreme Court's third Chief Justice on December 2, 1838.¹⁰³ As noted earlier, because he was leading military campaigns against several Indian tribes, Chief Justice Rusk did not actually receive word of his election until more than a month later on January 21, 1839—one week after the date on which Court would have had to convene its January 1839 session.¹⁰⁴

¹⁰⁰ *Ibid.*, 406; Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13.

¹⁰¹ Moore, *Eighteen Minutes*, 413; Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 67.

¹⁰² Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 67.

¹⁰³ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 316.

¹⁰⁴ Haley, *Texas Supreme Court*, 258 n.13; Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

Finally, just over three years after the Republic Supreme Court was established, Rusk became the first Chief Justice to actually gavel it into session on January 13, 1840.¹⁰⁵ During that, his one and only Court session, Chief Justice Rusk authored five opinions.¹⁰⁶ He resigned from the Court five months later on June 30, 1840.¹⁰⁷

After annexation, Rusk was unanimously elected in March 1846 alongside Sam Houston to serve as Texas's first U.S. Senators.¹⁰⁸

Chief Justice Rusk's wife, to whom he'd been married for nearly a quarter-century, died from tuberculosis on April 23, 1856 at only forty-seven years of age.¹⁰⁹ Just over a year later on July 29, 1857, this great man's grief was such that he took his own life.¹¹⁰

Both Rusk County, established in 1843, and the City of Rusk, founded in 1846, are named in his honor.¹¹¹

¹⁰⁵ Haley, *Texas Supreme Court*, 20; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 313–14, 316; Gilmer, *Early Courts*, 449.

¹⁰⁶ Haley, *Texas Supreme Court*, 20.

¹⁰⁷ Ariens, *Lone Star Law*, 19; Paulsen, *Supreme Court Judges*, 316–17.

¹⁰⁸ Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 68.

¹⁰⁹ Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 14; Lynch, *Bench and Bar*, 68.

¹¹⁰ Moore, *Eighteen Minutes*, 422; Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 14; Lynch, *Bench and Bar*, 68.

¹¹¹ Paulsen, *Supreme Court Judges*, 317.

END OF PART 1

Part 2, which will appear in the Summer 2018 issue of this Journal, will tell the stories of the remaining five San Jacinto jurists: Associate Judges Edward T. Branch, Benjamin Cromwell Franklin, James W. Robinson, Richardson "Dick" Scurry, and Robert McAlpin "Three-Legged Willie" Williamson.



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