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**SAN JACINTO JUSTICE: THE REPUBLIC
SUPREME COURT JURISTS WHO WON
TEXAS INDEPENDENCE**

*Dylan O. Drummond*¹

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I. INTRODUCTION

Some twenty-eight men served as either Chief Justice or Associate Judge of the Republic Supreme Court.² Yet only seven bled in the boggy marshes of San Jacinto to ensure that the Supreme Court would someday be founded.³



Fig. 1 – The 570-foot tall⁴ San Jacinto Monument, erected at the San Jacinto Battleground. Photo courtesy of @Coach_Naivar, Twitter (Mar. 12, 2017, 3:57 PM).

² Compare James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 290 (Dec. 1986) [hereinafter *Short History*] (estimating twenty-eight district judges served the Republic), with JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986*, 18 (2013) [hereinafter *NARRATIVE HISTORY*] (estimating no fewer than twenty-five district judges served the Republic).

³ James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305, 306 (Dec. 1986) [hereinafter *Supreme Court Judges*].

⁴ Naturally, the San Jacinto Monument is some fifteen feet taller than the 555-foot tall Washington Monument located in Washington, D.C. Compare SAN JACINTO MUSEUM OF HISTORY, *FAQs: HOW TALL IS THE MONUMENT? HOW MUCH TALLER THAN THE WASHINGTON MONUMENT?*, http://www.sanjacinto-museum.org/About_Us/FAQs/ (last visited Mar. 13, 2017), with NATIONAL PARK SERVICE, *FAQs: HOW TALL IS THE MONUMENT*, <https://www.nps.gov/wamo/faqs.htm> (last visited Mar. 8, 2017).

They ranged in rank at San Jacinto from Secretary of War to lowly private.⁵ 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.⁶

These seven San Jacinto jurists were:

- Chief Justice James T. Collinworth;
- 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 Judge Robert McAlpin "Three-Legged Willie" Williamson.⁷

All these men would later become giants in Texas law and politics. These San Jacinto jurists would go on to record their names in the annals of Texas history by risking their lives at San Jacinto so that each could devote their careers to the cause of Texas law and liberty.

II. STRUCTURE OF THE REPUBLIC SUPREME COURT

The Republic Supreme Court was quite unlike its current state successor.

⁵ Chief Justice Thomas J. Rusk served both as provisional and Republic Secretary of War. NARRATIVE HISTORY, at 20; STEPHEN L. MOORE, EIGHTEEN MINUTES: THE BATTLE OF SAN JACINTO AND THE TEXAS INDEPENDENCE CAMPAIGN 77-78 (2004) [hereinafter EIGHTEEN MINUTES]; *Supreme Court Judges*, 65 TEX. L. REV. at 314, 316; J.H. DAVENPORT, THE HISTORY OF THE SUPREME COURT OF THE STATE OF TEXAS 12 (1917) [hereinafter SUPREME COURT HISTORY]. Associate Judge Benjamin C. Franklin fought at San Jacinto as a private. NARRATIVE HISTORY, at 23; EIGHTEEN MINUTES, at 259, 481 n.20; *Supreme Court Judges*, 65 TEX. L. REV. at 332; JAMES D. LYNCH, THE BENCH AND BAR OF TEXAS 173 (1885) [hereinafter BENCH AND BAR].

⁶ *Id.* at 19, 23; *Supreme Court Judges*, 65 TEX. L. REV. at 308, 316, 332.

⁷ NARRATIVE HISTORY, at 19, 23, 26, 28-30, 235; SUPREME COURT HISTORY, at 16-17.

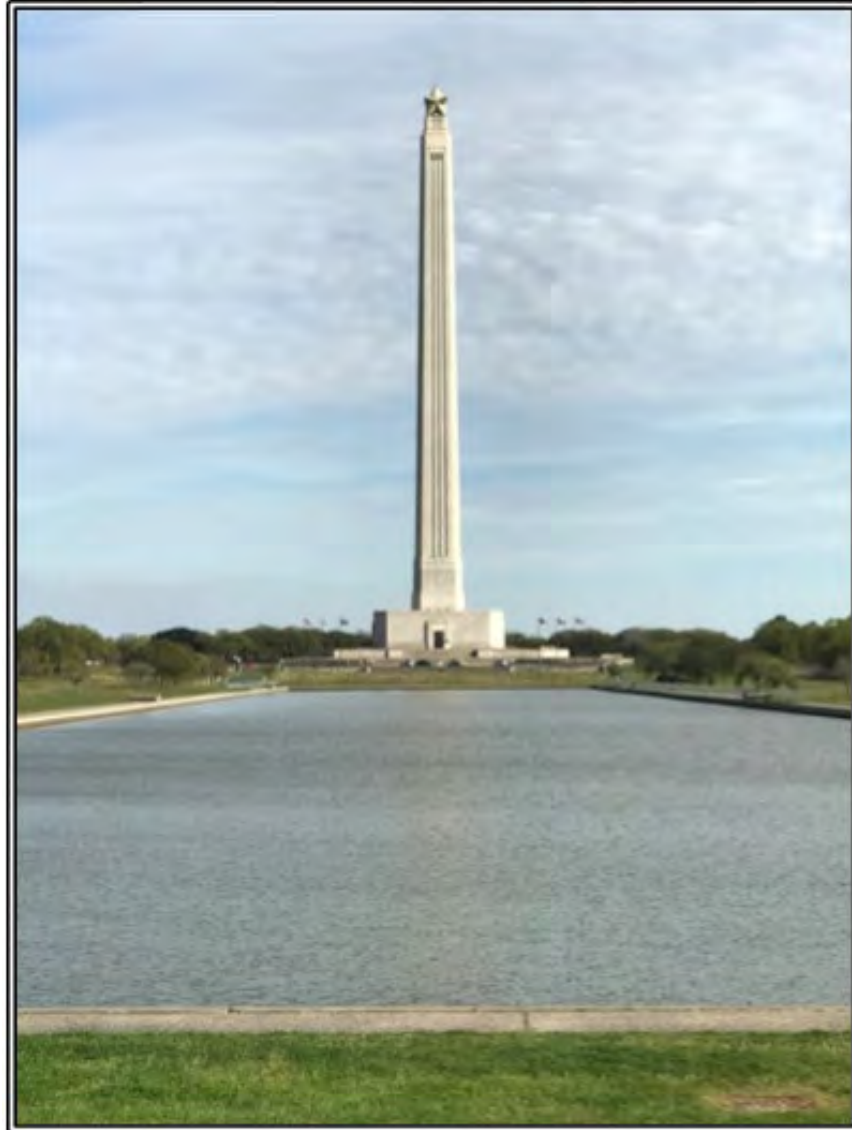


Fig. 2 – The San Jacinto Monument and Reflecting Pool. Photo by Dylan O. Drummond, taken on Texas’s 181st Independence Day, March 2, 2017. The Reflecting Pool is 1,777 feet long and 219 feet wide. San Jacinto Museum of History, FAQs: How Big is the Reflection Pool?, [http://www.sanjacinto-museum.org/About Us/FAQs/](http://www.sanjacinto-museum.org/About_Us/FAQs/) (last visited Mar. 13, 2017).

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

⁸ *Short History*, 65 TEX. L. REV. at 241.

Court automatically.⁹ That is, the Republic Supreme Court “was a temporary committee composed of the district judges, 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

⁹ *Short History*, 65 TEX. L. REV. at 241 (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 (citing TEX. CONST. art. IV, §§ 7, 9 (1836)); see MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* 16 (2011) [hereinafter *LONE STAR LAW*]; Clarence Wharton, *Early Judicial History of Texas*, 12 TEX. L. REV. 311, 323 (Apr. 1934) [hereinafter *Early Judicial History*]; F.A. Williams, *Suggestions for Improving Court Procedure in Texas*, 5 TEX. L. REV. 174, 174 (1927) [hereinafter *Improving Court Procedure*]; SUPREME COURT HISTORY, at 7, 16.

¹⁰ *Short History*, 65 TEX. L. REV. at 241; *Early Judicial History*, 12 TEX. L. REV. at 323; *Improving Court Procedure*, 5 TEX. L. REV. at 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); *NARRATIVE HISTORY*, at 19, App’x A, at 227; *LONE STAR LAW*, at 15-16; *SUPREME COURT HISTORY*, at 7.

¹² *NARRATIVE HISTORY*, at 33; see TEX. CONST. art. IV, § 8 (1836).

¹³ *Supreme Court Judges*, 65 TEX. L. REV. at 308; *Appendix B: Dates of Service for Chief Justices and Associate Judges, Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 370, 370 (1986) [hereinafter *Dates of Service*]; Daffin Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 435, 448 (1934) [hereinafter *Early Courts*]; *BENCH AND BAR*, at 64; see *NARRATIVE HISTORY*, at 235.

¹⁴ Compare TEX. CONST. art. IV, §§ 1, 7 (1836), with Act of Dec. 22,

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.”¹⁸ 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.”¹⁹ The Third Judicial District was situated “interior to the [S]econd and stretched northwest to the Indian frontier.”²⁰ The Fourth Judicial District was comprised of “the coastal bend and brush country from San Antonio to the Rio Grande.”²¹

In May 1838, the number of judicial districts was increased

1836, 1st Cong., R.S., § 1, *reprinted in* 1 H.P.N. GAMMEL, LAWS OF TEXAS 1822-1897, at 1258 (Austin, Gammel Book Co. 1898); NARRATIVE HISTORY, at 19, 235, App’x A, at 227; LONE STAR LAW, at 19; SUPREME COURT HISTORY, at 16-17.

¹⁵ NARRATIVE HISTORY, at 34, 235; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Dates of Service*, 65 TEX. L. REV. at 370-71; *Early Courts*, 12 TEX. L. REV. at 448; SUPREME COURT HISTORY, at 16-17.

¹⁶ TEX. CONST. art. IV, § 2 (1836); *Improving Court Procedure*, 5 TEX. L. REV. at 174; Supreme Court History, at 7.

¹⁷ *Short History*, 65 TEX. L. REV. at 241 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 1, *reprinted in* 1 H.P.N. GAMMEL, LAWS OF TEXAS 1822-1897, at 1258, 1258 (Austin, Gammel Book Co. 1898)); *see* LONE STAR LAW, at 19.

¹⁸ NARRATIVE HISTORY, at 33.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

to five,²² and increased again to seven in January 1840.²³ Both the Republic Constitution and Congress required district judges to permanently reside within their districts.²⁴ The judges themselves were elected by a joint ballot of both houses of the Republic Congress.²⁵

Because these judges served dual constitutional roles as both district judges and Supreme Court Associate Judges, each had to split their time between their district and Supreme Court duties.²⁶ The first statutes of the Republic required Associate Judges to convene their district courts on various days in March, April, and October.²⁷ 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.²⁸

This “annual migration” was an arduous one in frontier Texas.²⁹ During the spring, Associate Judges were forced to “ride through torrential rains, ford swollen streams, and take

²² *Short History*, 65 TEX. L. REV. at 241 (citing Act of May 24, 1838, 2d Cong., R.S., §§ 1, 6, *reprinted in* 1 H.P.N. GAMMEL, LAWS OF TEXAS 1822–1897, at 1500, 1502 (Austin, Gammel Book Co. 1898)); *see* LONE STAR LAW, at 19.

²³ *Short History*, 65 TEX. L. REV. at 241 (citing Act of Jan. 29, 1840, 4th Cong., R.S., § 1, *reprinted in* 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822–1897, at 350, 350–51 (Austin, Gammel Book Co. 1898)); *see* LONE STAR LAW, at 19.

²⁴ *Short History*, 65 TEX. L. REV. at 245 (citing TEX. CONST. art. IV, § 2 (1836) and Act of Dec. 14, 1837, 2d Cong., R.S., *reprinted in* 1 H.P.N. Gammel, Laws of Texas 1822–1897, at 1400 (Austin, Gammel Book Co. 1898)); SUPREME COURT HISTORY, at 7.

²⁵ TEX. CONST. art. IV, § 9 (1836); SUPREME COURT HISTORY, at 7–8.

²⁶ *Short History*, 65 TEX. L. REV. at 241, 243.

²⁷ *Id.* at 241, 245 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 2, *reprinted in* 1 H.P.N. Gammel, Laws of Texas 1822–1897, at 1258, 1258–59 (Austin, Gammel Book Co. 1898)); *see* TEX. CONST. art. IV, § 2 (1836).

²⁸ *Short History*, 65 TEX. L. REV. at 241, 245; *see* NARRATIVE HISTORY, at 33.

²⁹ *Short History*, 65 TEX. L. REV. at 245.

lodgings with any settler whose dwelling might afford them shelter from a storm.”³⁰ What reference materials an Associate Judge possessed were often limited by what he could fit in his saddlebags.³¹

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.³² Between the two, Associate Judges spent much more time overseeing their districts than they did hearing appeals before the Republic Supreme Court.³³

In fact, due in part to the crushing caseload, some Associate Judges prioritized riding their circuit over attending en banc Supreme Court sessions.³⁴ 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.³⁵ Other Associate Judges simply found it impossible to travel to the Republic capital to convene a session of the Supreme Court.³⁶

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.³⁷ Indeed, only sixteen of the twenty-eight district judges

³⁰ *Id.* at 245 (quoting DUNCAN W ROBINSON, JUDGE ROBERT MCALPIN WILLIAMSON: TEXAS’ THREE-LEGGED WILLIE 155 (1948) [hereinafter THREE-LEGGED WILLIE]).

³¹ *Short History*, 65 TEX. L. REV. at 245, 270.

³² *Id.* at 241, 245; *see* NARRATIVE HISTORY, at 33.

³³ *Short History*, 65 TEX. L. REV. at 243.

³⁴ *Id.* (citing THREE-LEGGED WILLIE, at 151); *see* NARRATIVE HISTORY, at 33.

³⁵ *See Short History*, 65 TEX. L. REV. at 243.

³⁶ *See id.*

³⁷ *Id.*; *see, e.g.*, Act of Jan. 16, 1843, 7th Cong., R.S., §3, *reprinted in* 2 H.P.N. Gammel, *Laws of Texas 1822–1897*, at 858, 859 (Austin, Gammel Book

who served actually wrote Supreme Court opinions.³⁸

The challenge the Republic Supreme Court faced of actually convening a quorum was also complicated by the fact that the Constitution forbid an Associate Judge from sitting in a case he tried below at the district court.³⁹ 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 actually meet was also an issue that frustrated its early ability to function. Between independence on March 2, 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.⁴⁰ 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.⁴¹

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 1836.⁴² The *Austin City Gazette* commemorated the occasion

Co. 1898) (granting 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).

³⁸ *Short History*, 65 TEX. L. REV. at 243–44 n.29.

³⁹ TEX. CONST. art. IV, § 8 (1836); LONE STAR LAW, at 16.

⁴⁰ JEFFREY S. KERR, SEAT OF EMPIRE: THE EMBATTLED BIRTH OF AUSTIN, TEXAS 13, 224 n.10 (2013) [hereinafter BIRTH OF AUSTIN].

⁴¹ NARRATIVE HISTORY, at 33; *Short History*, 65 TEX. L. REV. at 289–90 (citing Act of Feb. 3, 1842, 6th Cong., R.S., § 1, *reprinted in* 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822–1897, at 766 (Austin, Gammel Book Co. 1898) and Act of Feb. 3, 1845, 9th Cong., R.S., *reprinted in* 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822–1897, at 1162 (Austin, Gammel Book Co. 1898)).

⁴² 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); NARRATIVE HISTORY, at 18–19, App’x A, at 227; LONE STAR LAW, at 15–16, 19–20; *Short History*, 65 TEX. L. REV. at 248–49; SUPREME COURT HISTORY, at 7.



Fig. 3 – 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. Jeffrey S. Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* 118 (2013) [hereinafter *Birth of Austin*].

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.”⁴³

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.⁴⁴ 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

⁴³ AUSTIN CITY GAZETTE, Jan. 15, 1840, at 2, col. 4.

⁴⁴ NARRATIVE HISTORY, at 33; *James W. Paulsen, A Sesquicentennial Celebration: The Establishment of a Unique Texas Institution*, 53 TEX. B.J. 43, 43 (Jan. 1990) [hereinafter *Sesquicentennial Celebration*]; *Short History*, 65 TEX. L. REV. at 249.

Court a quorum.⁴⁵ In part because the Republic Congress moved the Supreme Court's opening session date from the first Monday in December to the second Monday in January, the Court failed to convene at all in 1838.⁴⁶ Regardless, doing so would have been impossible because the Supreme Court's first Chief Justice, James Collinsworth, drowned earlier that year on July 11th while crossing Galveston Bay.⁴⁷ Finally, no Supreme Court session was held in 1839 because the newly elected Chief Justice,⁴⁸ San Jacinto veteran Thomas J. Rusk, was leading

⁴⁵ *Short History*, 65 TEX. L. REV. at 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 Justice to a fine of \$1,000 and exposure to civil damages arising from the inconvenience suffered by litigants. *Id.* (citing Act of Dec. 14, 1837, 2d Cong., R.S., reprinted in 1 H.P.N. Gammel, *Laws of Texas 1822-1897*, at 1400 (Austin, Gammel Book Co. 1898)); see NARRATIVE HISTORY, at 33; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43. This penalty was not inconsequential as the annual salary of Associate Judges was just \$3,000. *Short History*, 65 TEX. L. REV. at 265 (citing Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in 1 H.P.N. GAMMEL, *LAW OF TEXAS 1822-97*, 1139 (Austin, Gammel Book Co. 1898)).

⁴⁶ NARRATIVE HISTORY, at 34; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

⁴⁷ TEX. CONST. art. IV, § 7 (1836) (while the Republic Constitution allowed that a Supreme Court quorum could form absent an Associate Judge, the Chief Justice's presence was required); see NARRATIVE HISTORY, at 19; *Short History*, 65 TEX. L. REV. at 250, 252 n.87; *Supreme Court Judges*, 65 TEX. L. REV. at 310; SUPREME COURT HISTORY, at 10. Although there has historically been some debate, it is generally accepted that Chief Justice Collinsworth committed suicide by throwing himself overboard after a bruising campaign for Republic President. NARRATIVE HISTORY, at 19; LONE STAR LAW, at 19; EIGHTEEN MINUTES, at 422; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 250 n.74; *Supreme Court Judges*, 65 TEX. L. REV. at 310; *Early Courts*, 12 TEX. L. REV. at 449; SUPREME COURT HISTORY, at 10; BENCH AND BAR, at 64.

⁴⁸ President Sam Houston appointed John Birdsall (Houston's future law partner) as the Supreme Court's new 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. LONE STAR LAW,



Fig. 4 – Undated painting by Edward Hall depicting the City of Austin in January 1840, looking north along Congress Avenue. Birth of Austin, at 79.

military campaigns against the Cherokee, Kickapoo, and Caddo Indian tribes.⁴⁹ As a result, Chief Justice Rusk did not even learn of his election until January 21, 1839, one week after the date the Court would have had to have convened.⁵⁰

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.⁵¹

at 19; *Sesquicentennial Celebration*, 53 TEX. B.J. at 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. LONE STAR LAW, at 19; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 316.

⁴⁹ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 252; *Supreme Court Judges*, 65 TEX. L. REV. at 316.

⁵⁰ See NARRATIVE HISTORY, at 258 n.13; LONE STAR LAW, at 19; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 252; *Supreme Court Judges*, 65 TEX. L. REV. at 316.

⁵¹ NARRATIVE HISTORY, at 20, 258 n.13; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43. Major Brigham’s residence was located on what is now the southwest corner of Congress Avenue and Second Street. *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

III. SAN JACINTO JURISTS

The only common thread among the seven San Jacinto veterans who would later serve on the Supreme Court was their extraordinary contributions 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,⁵² and count two of the Supreme Court's four Chief Justices among their number.⁵³ These incredible men served the Republic as loyally and ably as few others ever will. From the Texas Revolution forward—entirely apart from their judicial service—these San Jacinto jurists held the posts of: provisional Governor,⁵⁴ provisional Lieutenant Governor,⁵⁵ Republic Secretary of War,⁵⁶ Republic Secretary of State,⁵⁷ Speaker of the Republic House of Representatives,⁵⁸ Republic

⁵² See *Dates of Service*, 65 TEX. L. REV. at 370–71.

⁵³ NARRATIVE HISTORY, at 18

⁵⁴ Associate Judge James W. Robinson served as acting governor of the provisional Texas government after his predecessor was impeached. NARRATIVE HISTORY, at 26; NARRATIVE HISTORY, at 19; EIGHTEEN MINUTES, at 35, 85; *Supreme Court Judges*, 65 TEX. L. REV. at 353; *Early Judicial History*, 12 TEX. L. REV. at 319; SUPREME COURT HISTORY, at 18.

⁵⁵ Associate Judge Robinson was elected Lieutenant Governor of the Republic's provisional government. NARRATIVE HISTORY, at 26; EIGHTEEN MINUTES, at 35, 85; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353; SUPREME COURT HISTORY, at 18.

⁵⁶ Chief Justice Thomas J. Rusk named the Republic's Secretary of War in the fall of 1836. *Supreme Court Judges*, 65 TEX. L. REV. at 316; SUPREME COURT HISTORY, at 13.

⁵⁷ Chief Justice James T. Collinsworth served briefly in interim President David G. Burnet's cabinet as Secretary of State. *Supreme Court Judges*, 65 TEX. L. REV. at 310; SUPREME COURT HISTORY, at 7.

⁵⁸ Associate Judge Richardson A. "Dick" Scurry served as Speaker of the Republic House of Representatives. *Supreme Court Judges*, 65 TEX. L. REV. at 357; BENCH AND BAR, at 179.

Senator,⁵⁹ Republic Congressman,⁶⁰ United States Senator,⁶¹ United States Congressman,⁶² State Representative,⁶³ and State Senator.⁶⁴ Four of the seven San Jacinto jurists now have Texas Counties named after them.⁶⁵

While only sixteen of the twenty-eight district judges who served Republic Supreme Court actually wrote Supreme Court

⁵⁹ Chief Justice Collinworth served as a Republic Senator for two weeks before resigning to accept election as the Republic's First Chief Justice. *Supreme Court Judges*, 65 TEX. L. REV. at 310; SUPREME COURT HISTORY, at 7. Franklin served several terms in the Republic Congress.

⁶⁰ Associate Judge Scurry served three terms in the Republic House of Representatives. *Supreme Court Judges*, 65 TEX. L. REV. at 357; BENCH AND BAR, at 179. Associate Judge Robinson served five terms. *Supreme Court Judges*, 65 TEX. L. REV. at 364; *Three-Legged Willie*, 14 TEX. B.J. at 52–53; BENCH AND BAR, at 195.

⁶¹ In March 1846, Chief Justice Thomas J. Rusk and Sam Houston were unanimously elected to serve as Texas's first U.S. Senators. *Supreme Court Judges*, 65 TEX. L. REV. at 317; SUPREME COURT HISTORY, at 13; BENCH AND BAR, at 68.

⁶² Associate Judge Scurry was elected to the U.S. Congress in 1851. *Supreme Court Judges*, 65 TEX. L. REV. at 35; BENCH AND BAR, at 180.

⁶³ Associate Judge Benjamin C. Franklin served four terms in the state Legislature as a Representative, always as Chairman of the Judiciary Committee. *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 16–17; *Supreme Court Judges*, 65 TEX. L. REV. at 333; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 175.

⁶⁴ Associate Judge Franklin was elected to the Texas Senate with two-thirds of the vote in 1873, but passed away before he could take the oath of office. *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 17; *Supreme Court Judges*, 65 TEX. L. REV. at 333; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 176.

⁶⁵ Collinworth County was established in 1876 in Chief Justice Collinworth's honor. *Supreme Court Judges*, 65 TEX. L. REV. at 311. Rusk County, named after Chief Justice Rusk, was created in 1843. *Supreme Court Judges*, 65 TEX. L. REV. at 317. Franklin County is thought to have been named for Associate Judge Franklin. *Supreme Court Judges*, 65 TEX. L. REV. at 333, 333 n.192. Williamson County was established in 1838 and named for Associate Judge Williamson. *Supreme Court Judges*, 65 TEX. L. REV. at 364.

opinions, far fewer San Jacinto jurists ever did.⁶⁶ In fact, only Chief Justice Thomas J. Rusk and Associate Judge Richardson A. “Dick” Scurry ever authored any Supreme Court opinions at all.⁶⁷ Combined, they issued eight decisions (five by Chief Justice Rusk and three by Associate Judge Scurry).⁶⁸ In addition, only three of the San Jacinto jurists ever actually attended a Court session—Chief Justice Rusk, and Associate Judges Branch and Robinson.⁶⁹

And sadly, two of San Jacinto jurists took their own lives.⁷⁰



Fig. 5 – San Jacinto Battleground, looking northwest towards the Texian camp on the banks of Buffalo Bayou. Photo by Dylan O. Drummond, taken on Texas’s 181st Independence Day, March 2, 2017.

⁶⁶ Compare *Short History*, 65 TEX. L. REV. at 243–44 n.29, with NARRATIVE HISTORY, at 20, 30.

⁶⁷ NARRATIVE HISTORY, at 20, 30.

⁶⁸ *Id.*

⁶⁹ NARRATIVE HISTORY, at 20, 34, 235; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 313–14, 316; *Early Courts*, 12 TEX. L. REV. at 449–50.

⁷⁰ It is thought Chief Justice Collinsworth committed suicide on July 11, 1838 by jumping into Galveston Bay while aboard a ship. NARRATIVE HISTORY, at 19; LONE STAR LAW, at 19; EIGHTEEN MINUTES, at 422; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 250 n.74; *Supreme Court Judges*, 65 TEX. L. REV. at 310; *Early Courts*, 12 TEX. L. REV. at 449; SUPREME COURT HISTORY, at 10; BENCH AND BAR, at 64. Chief Justice Rusk took his

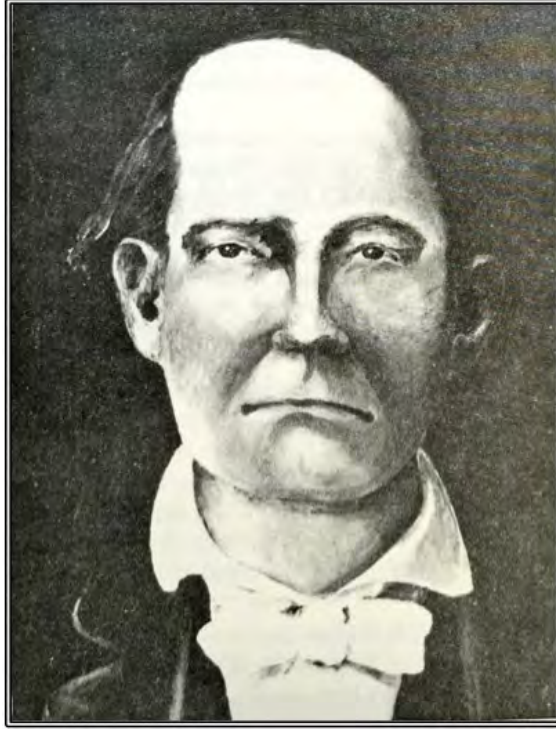


Fig. 6
Undated painting
by Anne Stubbs
of Chief Justice
James T.
Collinsworth.⁷⁵
James W. Paulsen,
*The Judges of the
Supreme Court
of the Republic of
Texas*, 65 Tex.
L. Rev. 305,
309 (Dec. 1986)
[hereinafter
*Supreme Court
Judges*].

A. Hon. James T. Collinsworth

“First Chief Justice of the Republic of Texas” was just one of several titles James T. Collinsworth⁷¹ held during his remarkable tenure in 1830s Texas.⁷² He also served as Republic

own life on July 29, 1857 in anguish over the death of his wife. EIGHTEEN MINUTES, at 422; *Supreme Court Judges*, 65 TEX. L. REV. at 317; SUPREME COURT HISTORY, at 14; BENCH AND BAR, at 68.

⁷¹ Chief Justice Collinsworth spelled his name both with and without a “g” (i.e., “Collingsworth”). NARRATIVE HISTORY, at 258 n.7; *Supreme Court Judges*, 65 TEX. L. REV. at 311 n.28. While the State of Texas later memorialized Collinsworth in 1876 by naming Collingsworth County in his honor, Chief Justice Cureton and the Texas Supreme Court seemed to favor the formulation without the “g,” using it in the presentation of his portrait to the Court. NARRATIVE HISTORY, at 258 n.7 (citing *In Memoriam*, at 126 Tex. xxxi); *Supreme Court Judges*, 65 TEX. L. REV. at 311 n.28. This article follows the Texas Supreme Court’s spelling convention.

⁷² See NARRATIVE HISTORY, at 19; *Supreme Court Judges*, 65 TEX. L. REV. at 308; SUPREME COURT HISTORY, at 7.

Secretary of State and Senator, and signed both the Texas Declaration of Independence and the Republic Constitution.⁷³ But before he assumed these posts, Collinsworth was a major and aide-de-camp to General Houston at the Battle of San Jacinto.⁷⁴

Collinsworth was a native Tennessean born in 1806, who began practicing law at the age of 20 around 1826.⁷⁶ During this time, one of his good friends was future United States President, James K. Polk,⁷⁷ who appointed him U.S. District Attorney for

⁷³ *Supreme Court Judges*, 65 TEX. L. REV. at 310; SUPREME COURT HISTORY, at 7.

⁷⁴ NARRATIVE HISTORY, at 19; EIGHTEEN MINUTES, at 435; *Supreme Court Judges*, 65 TEX. L. REV. at 310.

⁷⁵ Chief Justice Collinsworth's portrait has a curious history, perhaps the most intriguing of any in the Court's judicial portrait collection. Dylan O. Drummond, *Twitter Image Has History*, J. TEX. SUP. CT. HIST. SOC'Y, Winter 2011, at 26. It was one of the eighty-six paintings commissioned by former Commission of Appeals Judge Ocie Speer, and donated to the Supreme Court of Texas during the 1939 State Bar Annual meeting. *Id.* All the other portraits were executed by accomplished artists, either Sollie Solomon (a European-trained painter from San Antonio) or Isabella Adam—except the Collinsworth portrait. *Id.* His was completed by a lesser-known artist, Anne Stubbs, who was—as was later discovered—Judge Speer's daughter. *Id.* The image itself was later acquired by former Chief Justice Jack Pope, who purchased the originals and negatives used in Judge Speer's book on Texas jurists, after the book's publisher went out of business. *Id.*; see *Supreme Court Judges*, 65 TEX. L. REV. at 309.

⁷⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 308.

⁷⁷ 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, 692-693 (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. Coker*, 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

the Western District of Tennessee in 1830.⁷⁸ Collinsworth later declined reappointment and made his way to Texas between 1834 and 1835.⁷⁹

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.⁸⁰ 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.⁸¹

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.⁸² He was now a major in General Houston's command staff, and his aide-de-camp.⁸³

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

authority, became abrogated immediately on her admission as a State"), *overruling, Cocks 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).

⁷⁸ *Supreme Court Judges*, 65 TEX. L. REV. at 310.

⁷⁹ *Id.* at 308.

⁸⁰ NARRATIVE HISTORY, at 19; *Supreme Court Judges*, 65 TEX. L. REV. at 310.

⁸¹ SUPREME COURT HISTORY, at 9; *see* EIGHTEEN MINUTES, at 72, 74.

⁸² EIGHTEEN MINUTES, at 125, 166.

⁸³ *Id.* at 166, 180.

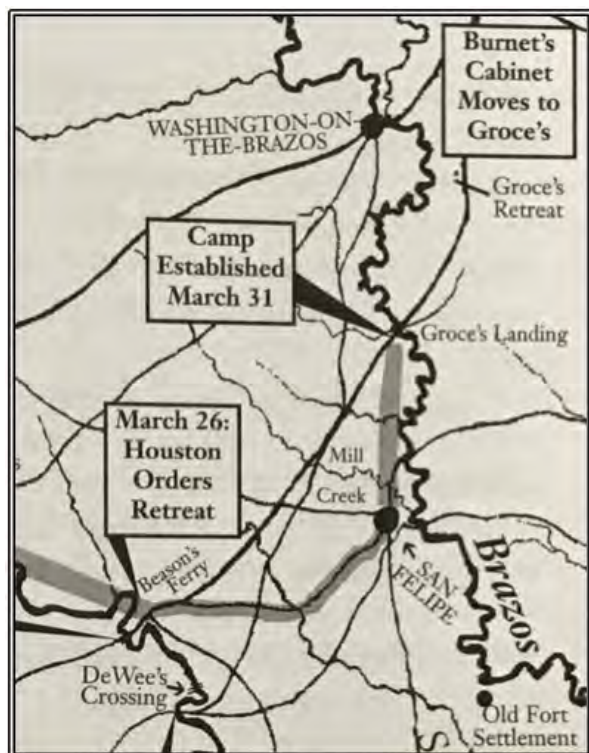


Fig. 7
Map of the location of Groce's Landing, relative to Washington-on-the-Brazos and San Felipe. Stephen L. Moore, *Eighteen Minutes: The Battle of San Jacinto and the Texas Independence Campaign* 125 (2004) [hereinafter *Eighteen Minutes*].

over to Collinsworth.⁸⁴ Houston had wanted to question the prisoners.⁸⁵

Little is known about Collinsworth's specific involvement in the Battle of San Jacinto,⁸⁶ but 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.⁸⁷

⁸⁴ *Id.* at 180.

⁸⁵ *Id.*

⁸⁶ *See id.* at 435.

⁸⁷ *Supreme Court Judges*, 65 TEX. L. REV. at 310 (quoting *In Memoriam*, 126 Tex. xxxi); *see* SUPREME COURT HISTORY, at 9.

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, 1836,⁸⁸ he turned down the request of interim President David G. Burnet earlier that spring to serve as the Republic's first judge.⁸⁹ Collinsworth declined, and Burnet appointed instead fellow San Jacinto jurist, Benjamin C. Franklin.⁹⁰

Though first, his tenure as Chief Justice was an unfulfilled one. Chief Justice Collinsworth never presided over the Court he led, nor authored a single opinion from its bench.⁹¹ 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.⁹²

The Court never convened its first scheduled session in December 1837 because no quorum could be formed.⁹³ And before the Court could meet the following year, Chief Justice Collinsworth drowned in Galveston Bay, likely by his own hand, on July 11, 1838.⁹⁴

⁸⁸ *Supreme Court Judges*, 65 TEX. L. REV. at 308; *Dates of Service*, 65 TEX. L. REV. at 370; *Early Courts*, 12 TEX. L. REV. at 448; BENCH AND BAR, at 64; see NARRATIVE HISTORY, at 235.

⁸⁹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; *Early Judicial History*, 12 TEX. L. REV. at 321–22; see BENCH AND BAR, at 173.

⁹⁰ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 173.

⁹¹ *Supreme Court Judges*, 65 TEX. L. REV. at 308.

⁹² *Id.* (quoting *In Memoriam*, 126 Tex. xxxi).

⁹³ NARRATIVE HISTORY, at 33; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 249.

⁹⁴ NARRATIVE HISTORY, at 19; LONE STAR LAW, at 19; EIGHTEEN MINUTES, at 422; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 250 n.74; *Supreme Court Judges*, 65

Some amount of melancholy, perhaps magnified by what he witnessed or even did at San Jacinto, followed Collinsworth the rest of his days.⁹⁵ He was known to treat his mood with drink.⁹⁶ 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.⁹⁷ 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.⁹⁸ "Calumnies of the most appalling sort were hurled."⁹⁹

After Chief Justice Collinsworth's passing, state district judge A.W. Terrell 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.¹⁰⁰

B. Hon. 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.¹⁰¹ If anyone's feats at

TEX. L. REV. at 310; *Early Courts*, 12 TEX. L. REV. at 449; SUPREME COURT HISTORY, at 10; BENCH AND BAR, at 64.

⁹⁵ See NARRATIVE HISTORY, at 19.

⁹⁶ *Id.*; SUPREME COURT HISTORY, at 10 n.1.

⁹⁷ *Short History*, 65 TEX. L. REV. at 250; SUPREME COURT HISTORY, at 9-10.

⁹⁸ *Short History*, 65 TEX. L. REV. at 250.

⁹⁹ *Id.*

¹⁰⁰ *Short History*, 65 TEX. L. REV. at 250; *Supreme Court Judges*, 65 TEX. L. REV. at 311. No doubt Chief Justice Collinsworth's extensive common-law knowledge was fed by his large law library, consisting of some 175 volumes. NARRATIVE HISTORY, at 19.

¹⁰¹ NARRATIVE HISTORY, at 20; *Supreme Court Judges*, 65 TEX. L. REV. at 313-14, 316.

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.¹⁰²

Rusk was born on December 5, 1803 in the Pendleton District of South Carolina.¹⁰³ Rusk's family lived in a house owned by the future Vice-President of the United States, John C. Calhoun.¹⁰⁴ 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.¹⁰⁵ After being admitted to the South Carolina bar at the age of 29, Rusk wed and began his law practice in Clarksville.¹⁰⁶ However, he soon fell prey to embezzlers in a gold-mining scheme, who fled to Texas.¹⁰⁷ Rusk doggedly pursued the criminals, arriving in Nacogdoches, where he decided to settle.¹⁰⁸

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.¹⁰⁹ Soon thereafter, Rusk served as Nacogdoches's delegate to the Constitutional

¹⁰² *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 314; see *Early Courts*, 12 TEX. L. REV. at 449.

¹⁰³ LONE STAR LAW, at 19; EIGHTEEN MINUTES, at 95; *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 10; BENCH AND BAR, at 65.

¹⁰⁴ *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 10; BENCH AND BAR, at 65.

¹⁰⁵ *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 10-11; BENCH AND BAR, at 65.

¹⁰⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 11; BENCH AND BAR, at 65.

¹⁰⁷ *Supreme Court Judges*, 65 TEX. L. REV. at 314; BENCH AND BAR, at 65.

¹⁰⁸ *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 11; BENCH AND BAR, at 65.

¹⁰⁹ NARRATIVE HISTORY, at 258 n.12; EIGHTEEN MINUTES, at 95; *Supreme Court Judges*, 65 TEX. L. REV. at 314; SUPREME COURT HISTORY, at 11-12; BENCH AND BAR, at 66.

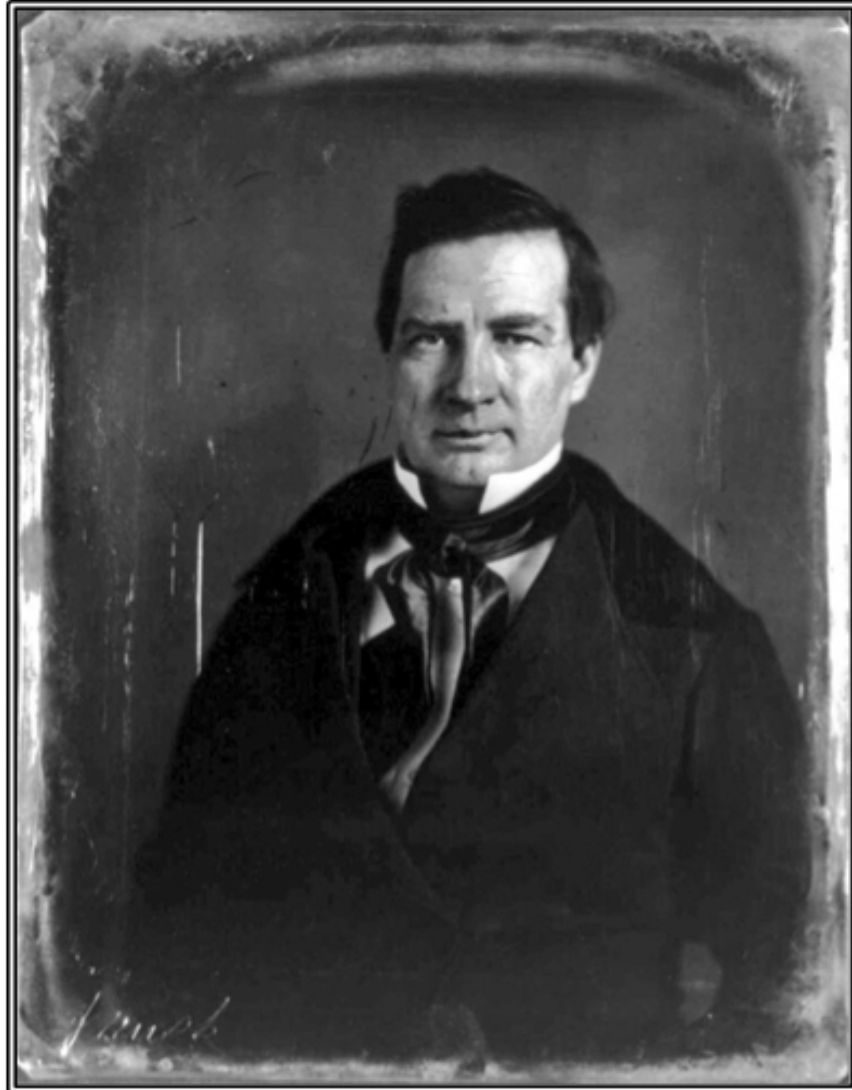


Fig. 8 - Late 1840s daguerreotype, courtesy of the Chicago Historical Society, ICHi-12355. *Eighteen Minutes*, at 168.

Convention in March 1836, signing both the Texas Declaration of Independence and Republic Constitution.¹¹⁰ On March 16, 1836, Rusk was elected Secretary of War, and was sworn-in the following morning at 4:00 A.M.¹¹¹

¹¹⁰ *EIGHTEEN MINUTES*, at 95; *Supreme Court Judges*, 65 *TEX. L. REV.* at 314; *see* *BENCH AND BAR*, at 66.

¹¹¹ *EIGHTEEN MINUTES*, at 77-78; *SUPREME COURT HISTORY*, at 12.

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 based upon his strength of character.¹¹²

Rusk oversaw the burial of Fannin and his men who were slaughtered at Goliad.¹¹³ 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 day¹¹⁴

Around April 7th or 8th, Rusk relieved his future fellow San Jacinto jurist, Robert Williamson of command of a regiment of Texas Rangers because one of Williamson's drunken soldiers had killed two Mexican prisoners before they could be questioned.¹¹⁵

On April 13, 1836, Rusk strongly implored Texans 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.¹¹⁶

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,

¹¹² EIGHTEEN MINUTES, at 169.

¹¹³ BENCH AND BAR, at 66.

¹¹⁴ *Id.*

¹¹⁵ EIGHTEEN MINUTES, at 180.

¹¹⁶ *Id.* at 209.

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!¹¹⁷

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.”¹¹⁸



Fig. 9 – 1898 oil painting by Henry Arthur McArdle, entitled, “The Battle of San Jacinto.” See *Eighteen Minutes*, at 327.¹¹⁹

¹¹⁷ SUPREME COURT HISTORY, at 12 n.1; see EIGHTEEN MINUTES, at 248.

¹¹⁸ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 314; see *Early Courts*, 12 TEX. L. REV. at 449; SUPREME COURT HISTORY, at 12 n.1.

¹¹⁹ McArdle based his work on numerous interviews with San Jacinto veterans. EIGHTEEN MINUTES, at 327.

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*.¹²⁰ It was Seguin who informed Rusk that the Mexican soldiers were likely to take a siesta that afternoon.¹²¹

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!”¹²² “These words,” Rusk remarked, “electrified all.”¹²³ 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.”¹²⁴

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.¹²⁵ 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,”¹²⁶ “Push on boys, push on!”¹²⁷ 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.”¹²⁸

¹²⁰ EIGHTEEN MINUTES, at 309. Seguin was one of the last people to escape the Alamo on February 25, 1836, taking with him one of Travis’s pleas for reinforcements to Colonel Fannin. JAMES DONOVAN, THE BLOOD OF HEROES: THE 13-DAY STRUGGLE FOR THE ALAMO—AND THE SACRIFICE THAT FORGED A NATION 219–20 (2012) [hereinafter BLOOD OF HEROES].

¹²¹ EIGHTEEN MINUTES, at 309.

¹²² *Id.* at 321.

¹²³ *Id.*

¹²⁴ *Id.* at 321–22.

¹²⁵ *Id.* at 338–39.

¹²⁶ *Id.* at 340.

¹²⁷ SUPREME COURT HISTORY, at 12–13 n.1.

¹²⁸ *Id.*

Fig. 10
 San Jacinto
 Battleground
 marker showing
 the location
 of Secretary
 Rusk's advance.
 Photo by Dylan
 O. Drummond,
 taken on
 Texas's 181st
 Independence
 Day, March 2,
 2017.

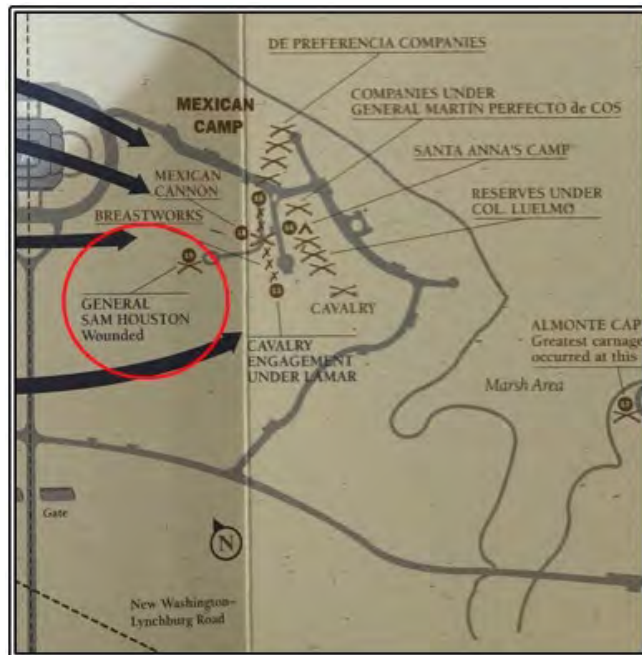


Fig. 11
 Map of the
 San Jacinto
 Battleground—
 location where
 General
 Houston was
 wounded
 circled.
 Texas Parks
 and Wildlife
 Department,
 San Jacinto
 Battleground,
 State
 Historical Park
 [hereinafter
 San Jacinto
 Battleground].

Following the battle, when Santa Anna was brought before General Houston after his capture, Rusk interrogated the deposed dictator.¹²⁹ Rusk demanded to know what excuse Santa Anna had for the Alamo massacre.¹³⁰ 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.¹³¹ 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 recovered from his personal effects.¹³²



Fig. 12 – Early 1800s photograph taken by Lorenzo de Zavala, Jr. of the large post oak under which Sam Houston was lying when Santa Anna was brought before him. Buffalo Bayou lies in the background. *EIGHTEEN MINUTES*, at 380.

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

¹²⁹ *EIGHTEEN MINUTES*, at 384.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 385.

G. Burnet.¹³³ In it, he wrote, “It was freemen fighting against the minions of tyranny, and the result proved the inequality of such a contest.”¹³⁴

Following San Jacinto, Rusk was elevated to General and Commander-in-Chief of the Texan forces while Sam Houston recovered from his ankle injury.¹³⁵ 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.¹³⁶ He soon returned to public life, though, being elected from Nacogdoches to a seat in the Second Republic Congress in 1837.¹³⁷

Rusk was elected by a joint ballot of the Republic Congress as the Supreme Court’s third Chief Justice on December 2, 1838.¹³⁸ 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.¹³⁹

Finally—four years after the Republic Supreme Court was established—Rusk was the first Chief Justice to actually gavel it into session on January 13, 1840.¹⁴⁰ During that, his

¹³³ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 14; EIGHTEEN MINUTES, at 388, 481 n.20; see *Supreme Court Judges*, 65 TEX. L. REV. at 332.

¹³⁴ EIGHTEEN MINUTES, at 411.

¹³⁵ *Id.* at 406; *Supreme Court Judges*, 65 TEX. L. REV. at 316; SUPREME COURT HISTORY, at 13.

¹³⁶ EIGHTEEN MINUTES, at 413; *Supreme Court Judges*, 65 TEX. L. REV. at 316; SUPREME COURT HISTORY, at 13; BENCH AND BAR, at 67.

¹³⁷ *Supreme Court Judges*, 65 TEX. L. REV. at 316; SUPREME COURT HISTORY, at 13; BENCH AND BAR, at 67.

¹³⁸ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 316.

¹³⁹ NARRATIVE HISTORY, at 258 n.13; LONE STAR LAW, at 19; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 252; *Supreme Court Judges*, 65 TEX. L. REV. at 316.

¹⁴⁰ NARRATIVE HISTORY, at 20; *Sesquicentennial Celebration*, 53 TEX.

one and only Court session, Chief Justice Rusk authored five opinions, including the Court's first—Cause “No. I.”¹⁴¹ He resigned from the Court five months later on June 30, 1840.¹⁴²

After annexation in March 1846, Rusk was unanimously elected alongside Sam Houston to serve as Texas's first U.S. Senators.¹⁴³

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 47 years of age.¹⁴⁴ Just over a year later on July 29, 1857, this great man's grief was such that he took his own life.¹⁴⁵

Both Rusk County, established in 1843, and the City of Rusk, founded in 1846, are named in his honor.¹⁴⁶

C. Hon. Edward T. Branch

Associate Judge Edward T. Branch survived Mexican pirates in the Gulf of Mexico and Mexican soldiers at San Jacinto to serve on the Fifth Judicial District and Republic Supreme Court benches.

B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 313–14, 316; *Early Courts*, 12 TEX. L. REV. at 449.

¹⁴¹ NARRATIVE HISTORY, at 20. These opinions were: *see Whiteman v. Garrett*, No. XVI, Dallam 374 (Tex. 1840); *Bd. of Land Comm'rs of Milam Cty. v. Bell*, No. XI, Dallam 366 (1840); *Goode v. Cheshire*, No. VII, Dallam 362 (Tex. 1840); *Yeamans v. Tone*, No. VI, Dallam 362 (Tex. 1840); *Republic of Tex. v. McCulloch*, No. I, Dallam 357 (Tex. 1840).

¹⁴² LONE STAR LAW, at 19; *Supreme Court Judges*, 65 TEX. L. REV. at 316–17.

¹⁴³ *Supreme Court Judges*, 65 TEX. L. REV. at 317; SUPREME COURT HISTORY, at 13; BENCH AND BAR, at 68.

¹⁴⁴ *Supreme Court Judges*, 65 TEX. L. REV. at 317; SUPREME COURT HISTORY, at 14; BENCH AND BAR, at 68.

¹⁴⁵ EIGHTEEN MINUTES, at 422; *Supreme Court Judges*, 65 TEX. L. REV. at 317; SUPREME COURT HISTORY, at 14; BENCH AND BAR, at 68.

¹⁴⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 317.

Branch was a Virginian, born in Richmond on December 11, 1811.¹⁴⁷ He set sail for Cuba in 1835 on a ship called the *Montezuma*.¹⁴⁸ Mexican pirates captured his ship in the Gulf of Mexico, however, before she could reach port.¹⁴⁹ After robbing Branch, the pirates set him ashore in Anahuac.¹⁵⁰

He settled in nearby Liberty, and became a schoolteacher.¹⁵¹ From there, he joined the “Liberty Volunteers” as a First Sergeant under Captain William M. Logan, Jr. on March 6, 1836.¹⁵²

At San Jacinto, Branch’s Liberty Volunteers were made part of Colonel Sidney Sherman’s Second Regiment.¹⁵³ On April 20, 1836, General Houston ordered Colonel Sherman to lead roughly half of his cavalry out to an island of timber in front and to the right of the Texian lines.¹⁵⁴ When the cavalry entered the timber, however, they discovered some 400 Mexican troops already occupied it.¹⁵⁵ The Mexican riflemen opened fire on the retreating Texians, shooting Branch’s horse out from under him.¹⁵⁶ Once Branch made it safely back to the Texian camp, he shared a laugh with his comrades regarding the fervor with which he ran back to cover.¹⁵⁷

¹⁴⁷ *Id.* at 325.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*; NARRATIVE HISTORY, at 28.

¹⁵¹ *Supreme Court Judges*, 65 TEX. L. REV. at 326; *see* NARRATIVE HISTORY, at 28.

¹⁵² EIGHTEEN MINUTES, at 92, 447; *see Supreme Court Judges*, 65 TEX. L. REV. at 326.

¹⁵³ EIGHTEEN MINUTES, at 446–47.

¹⁵⁴ *Id.* at 267–68.

¹⁵⁵ *Id.* at 268.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

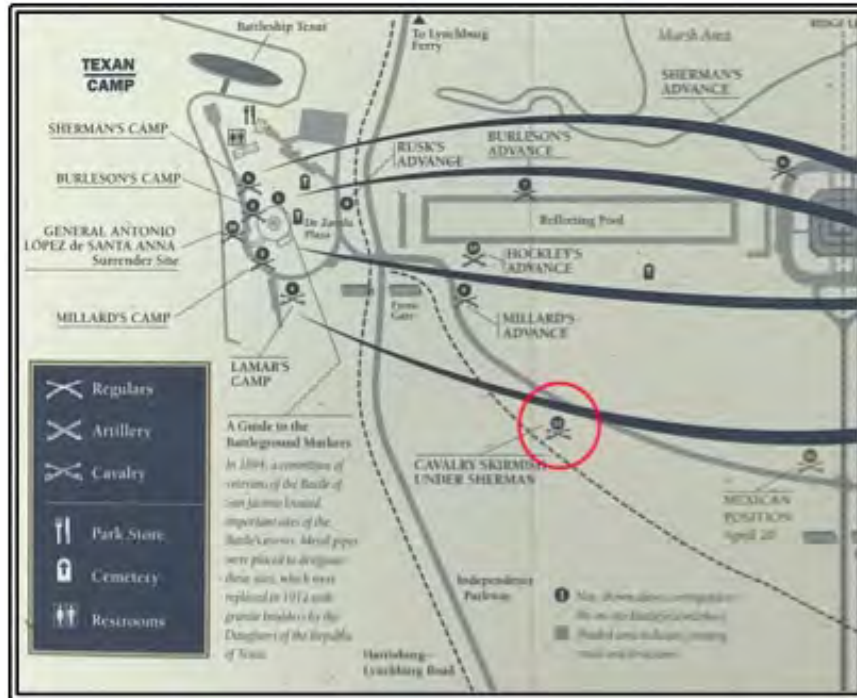


Fig. 13 – Map of the San Jacinto Battleground—location of cavalry skirmish under Colonel Sherman circled. San Jacinto Battleground.

Branch survived the main battle the following day,¹⁵⁸ and went on to represent Liberty County as a member of the First and Second Republic Congresses from 1836 to 1838.¹⁵⁹ He then served the Fifth Judicial District court from its creation on May 24, 1838 until he resigned in June 1840.¹⁶⁰

Only 28 years old at the time, it is thought Judge Branch may have attended the first session of the Republic Supreme Court in January 1840.¹⁶¹ He resigned shortly after the close of

¹⁵⁸ *Supreme Court Judges*, 65 TEX. L. REV. at 326; NARRATIVE HISTORY, at 28; see EIGHTEEN MINUTES, at 435, 447.

¹⁵⁹ *Supreme Court Judges*, 65 TEX. L. REV. at 326; NARRATIVE HISTORY, at 28.

¹⁶⁰ *Supreme Court Judges*, 65 TEX. L. REV. at 325–26; *Dates of Service*, 65 TEX. L. REV. at 371; see NARRATIVE HISTORY, at 28, 235; *Early Courts*, 12 TEX. L. REV. at 450; SUPREME COURT HISTORY, at 16.

¹⁶¹ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; see NARRATIVE HISTORY, at 34, 235. *But see Supreme Court Judges*, 65 TEX. L. REV. at 325; *Early Courts*, 12 TEX. L. REV. at 448.

the Court's inaugural session, however, which may account for his failure to author any opinions.¹⁶²

Judge Branch's devotion to serving the land he helped free from Mexico's tyrannical grip did not wane when Texas was admitted to the Union. He again represented Liberty County, this time in the 1846 State Legislature.¹⁶³

Judge Branch passed away on September 24, 1861 and is buried in his family's cemetery in Liberty.¹⁶⁴

D. Hon. Benjamin Cromwell Franklin

Although he never attended a session of the Republic Supreme Court on which he served, Associate Judge Benjamin C. Franklin bears the distinction of being the very first judge of the Republic of Texas.¹⁶⁵ He would later be entrusted by fellow San Jacinto jurist, Thomas Rusk, to bring the news of the Texian victory and Santa Anna's capture to the world.¹⁶⁶

Benjamin Franklin was born in Clarke County, Georgia on April 25, 1805.¹⁶⁷ Franklin graduated from the aptly-named Franklin College in Athens, Georgia.¹⁶⁸ This was no coincidence. His father, Abednego, founded the school in 1801, just before

¹⁶² *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

¹⁶³ *Supreme Court Judges*, 65 TEX. L. REV. at 326.

¹⁶⁴ *Id.*.

¹⁶⁵ NARRATIVE HISTORY, at 23; *Supreme Court Judges*, 65 TEX. L. REV. at 332; *see* SUPREME COURT HISTORY, at 17.

¹⁶⁶ *See* Hon. Ken Wise, *Judge Benjamin Cromwell Franklin, the First Judge in the Republic of Texas*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14 [hereinafter *First Republic Judge*]; *Supreme Court Judges*, 65 TEX. L. REV. at 332.

¹⁶⁷ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332; BENCH AND BAR, at 173.

¹⁶⁸ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332; BENCH AND BAR, at 173.

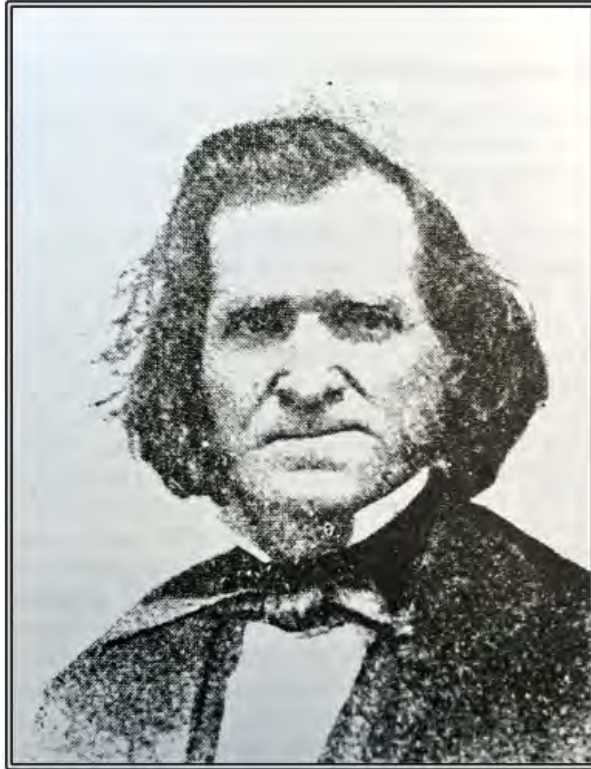


Fig. 14 Undated photograph of Associate Judge Benjamin C. Franklin, courtesy of the Texas Collection, Baylor University. *See, e.g.,* Narrative History, at 101 (reproduced from the *Texas Bar Journal* photo collection, Archives of the State Bar of Texas); Eighteen Minutes, at 260; *Supreme Court Judges*, 65 Tex. L. Rev. at 331.

Benjamin was born.¹⁶⁹ Franklin College is now better known as the University of Georgia.¹⁷⁰

Franklin was admitted to the Georgia bar in 1827.¹⁷¹ Thereafter, he practiced with his brother-in-law, Charles McDonald.¹⁷² McDonald would later serve as the Georgia Governor in 1839.¹⁷³

But by 1835, Franklin was lured to the cause of Texas independence as were his fellow Georgians, James Fannin

¹⁶⁹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11.

¹⁷⁰ *Id.*; *see* UNIVERSITY OF GEORGIA, HISTORY OF UGA, <http://www.uga.edu/profile/history/> (last visited Mar. 13, 2017).

¹⁷¹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332.

¹⁷² *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; *see Supreme Court Judges*, 65 TEX. L. REV. at 332.

¹⁷³ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332.

and Mirabeau B. Lamar.¹⁷⁴ He arrived in in the Port of Velasco on April 16, 1835.¹⁷⁵ Helping Captain Robert J. Calder raise a company, he served with legendary Texas Ranger, Erastus “Deaf” Smith.¹⁷⁶ While on a scouting mission on March 20, 1836, Franklin came across Deaf Smith’s party, who had just taken a Mexican scout prisoner, along with some of the Mexican company’s horses.¹⁷⁷ After the Ranger scouts returned to General Houston’s camp at Beason’s Crossing, another Texian soldier noticed that one of the Mexican horses carried a small bit of clothing from a fallen Alamo defender.¹⁷⁸

On April 7, 1836, interim President Burnett commissioned Franklin as a Captain to raise his own company of scouts, but Santa Anna’s rapid advance forced Franklin to abandon the effort.¹⁷⁹ As a result, Franklin arrived at San Jacinto as a private under his old Captain’s command.¹⁸⁰

Upon surveying the Texian army as they camped at the junction of the San Jacinto River and Buffalo Bayou on the morning of April 20, 1836, Franklin described what he saw:

Around some twenty or thirty camp-fires stood as

¹⁷⁴ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 11; *Early Judicial History*, 12 TEX. L. REV. at 322.

¹⁷⁵ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332; BENCH AND BAR, at 173.

¹⁷⁶ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 11; *Supreme Court Judges*, 65 TEX. L. REV. at 332; *Early Judicial History*, 12 TEX. L. REV. at 322; BENCH AND BAR, at 173; *see* SUPREME COURT HISTORY, at 17.

¹⁷⁷ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 12; EIGHTEEN MINUTES, at 89; *see* SUPREME COURT HISTORY, at 17.

¹⁷⁸ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 12; EIGHTEEN MINUTES, at 90.

¹⁷⁹ EIGHTEEN MINUTES, at 259, 481 n.20; *Supreme Court Judges*, 65 TEX. L. REV. at 332; BENCH AND BAR, at 173.

¹⁸⁰ *See* EIGHTEEN MINUTES, at 445, 481 n.20; *Supreme Court Judges*, 65 TEX. L. REV. at 332; *Early Judicial History*, 12 TEX. L. REV. at 322; BENCH AND BAR, at 173.

many groups of men, English, Irish, Scotch, French, Germans, Italians, Poles, Yankees, Mexicans, all unwashed, unshaven for months, their long hair, beard and mustaches, ragged and matted, their clothes in tatters, and plastered with mud. In a word, *a more savage band could scarcely have been assembled*.¹⁸¹

Later that day, Franklin transferred to the cavalry corps commanded by his fellow Georgian, then-Colonel Mirabeau B. Lamar.¹⁸²

During the battle, Franklin rode with renowned Texas Ranger Captain Henry Karnes and several other cavalymen—including survivors from the Goliad Massacre.¹⁸³ Their band, about eighteen in number, cornered fleeing Mexican soldiers at Vince’s Bridge, which Deaf Smith had destroyed earlier in the day.¹⁸⁴ The Goliad survivors ensured no prisoners were taken.¹⁸⁵

Although they didn’t know it, Franklin’s cavalry unit nearly captured Santa Anna. The cowardly general later wrote:

They followed me, and after a league and a half, on a large creek where the bridge had been burned they caught up with me.

I lost my horse, and with difficulty I hid myself among some small pine trees. The approach of night gave me the chance to evade their vigilance¹⁸⁶

¹⁸¹ EIGHTEEN MINUTES, at 260–61 (emphasis added); see *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 13.

¹⁸² *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 13; EIGHTEEN MINUTES, at 290–91.

¹⁸³ EIGHTEEN MINUTES, at 353; see *Supreme Court Judges*, 65 TEX. L. REV. at 332; *Early Judicial History*, 12 TEX. L. REV. at 322; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 173.

¹⁸⁴ EIGHTEEN MINUTES, at 353–54. Vince’s Bridge was located approximately eight miles southwest of the San Jacinto Battleground, along the only direct wagon road linking the towns of Harrisburg and Lynchburg. *Id.* at 303.

¹⁸⁵ *Id.* at 354. Some of the fleeing Mexican soldiers fell to their knees as they were overtaken by the Texians, exclaiming, “Me no Alamo!” *Id.* These were their last words. *Id.*

¹⁸⁶ *Id.* at 355.



Fig. 15 - Map of the San Jacinto Battleground, showing the junction of the San Jacinto River and Buffalo Bayou, where the Texian army made camp. TEXAS PARKS AND WILDLIFE DEPARTMENT, MEXICAN CAMP (Photo by Dylan O. Drummond, taken on Texas's 181st Independence Day, March 2, 2017).

Thus, the burning of Vince's Bridge halted Santa Anna's attempted flight on April 21st, and forced him instead to cover

in the woods.¹⁸⁷ He was captured the following day near the bridge by Sergeant James A. Sylvester.¹⁸⁸

Franklin, along with Captain Karnes and future Republic President Lamar, stood next to the large oak tree on the banks of Buffalo Bayou under which General Houston was situated, and bore witness to the scene when Santa Anna was brought before Houston and Secretary Rusk for interrogation.¹⁸⁹



Fig. 16 – 1886 oil painting by William Henry Huddle, entitled, “The Surrender of Santa Anna.” See *EIGHTEEN MINUTES*, at 383.

Franklin had one last task to complete before his part in the San Jacinto battle was finished. Secretary Rusk selected Franklin to relay the official news of the victory to interim President David G. Burnet and the rest of the provisional government at Galveston.¹⁹⁰ Franklin asked his commander, Captain Calder, to accompany him, and they commandeered the nearest naval vessel they could find to ferry them down the San Jacinto River

¹⁸⁷ *Id.* at 381.

¹⁸⁸ *Id.* at 376–77.

¹⁸⁹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 14; *EIGHTEEN MINUTES*, at 381–82.

¹⁹⁰ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 14; *EIGHTEEN MINUTES*, at 388, 481 n.20; see *Supreme Court Judges*, 65 TEX. L. REV. at 332.

toward Galveston Bay.¹⁹¹ Unfortunately, the only nearby vessel was a row boat.¹⁹² Franklin and Calder pressed two privates into service to do the rowing, and four days later they reached Galveston Bay after fighting strong winds, high waves, and unrelenting rain during the journey.¹⁹³

In the Bay, the men pulled alongside the Texas Navy Schooner, the *Invincible*, to relay the news of the San Jacinto victory.¹⁹⁴ Captain Jeremiah Brown threw off his hat and gave Franklin and his men three cheers, ordering the *Invincible*'s eighteen-pound gun nicknamed, "Long Tom," to fire three



Fig. 17 – Undated painting of the Texas Navy schooner, the *Invincible*, available at https://en.wikipedia.org/wiki/File:Texas_Schooner_Invincible.jpg © (last visited Mar. 13, 2017).

¹⁹¹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14; EIGHTEEN MINUTES, at 388, 400.

¹⁹² *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14; EIGHTEEN MINUTES, at 400.

¹⁹³ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14; EIGHTEEN MINUTES, at 388, 400; *Early Judicial History*, 12 TEX. L. REV. at 322–23.

¹⁹⁴ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 14; EIGHTEEN MINUTES, at 400.

celebratory rounds as well.¹⁹⁵ After being ferried to the Navy’s flagship, the *Independence*, they were put ashore at Galveston to deliver the good news to interim President Burnet.¹⁹⁶

The year following the battle, Franklin penned an anonymous article, entitled, “The Battle of San Jacinto: By One Who Fought in It.”¹⁹⁷ It was reprinted on September 7, 1844, but provided enough clues to later verify his identity.¹⁹⁸

Shortly before the San Jacinto battle on April 3, 1836, the *Invincible* had captured an American brig called the *Pocket*.¹⁹⁹ Although her manifest indicated no illicit cargo, she was found to be carrying gun powder, ammunition, dispatches for Santa Anna, and a detailed map of the Texas coastline and her defenses.²⁰⁰

Adjudicating the status of the *Pocket* proved difficult, however, because Texas did not yet have any courts in April 1836.²⁰¹ To remedy this, interim President Burnet established the “District of Brazos” and asked James Collinworth to serve as its inaugural judge.²⁰² Collinworth declined, and Burnet appointed Franklin instead on May 8, 1836—nominally making him the first judge of the Republic.²⁰³ The legality of

¹⁹⁵ EIGHTEEN MINUTES, at 400–01.

¹⁹⁶ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 14–15; EIGHTEEN MINUTES, at 401.

¹⁹⁷ EIGHTEEN MINUTES, at 260, 481 n.20.

¹⁹⁸ *Id.* at 481 n.20.

¹⁹⁹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 15; *Supreme Court Judges*, 65 TEX. L. REV. at 332; *Early Judicial History*, 12 TEX. L. REV. at 322.

²⁰⁰ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 15; *Early Judicial History*, 12 TEX. L. REV. at 322.

²⁰¹ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16.

²⁰² *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; *Early Judicial History*, 12 TEX. L. REV. at 321–22; see BENCH AND BAR, at 173.

²⁰³ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016,

his appointment, however, is doubtful given the Republic Constitution’s provision—adopted less than two months before on March 17, 1836—that permitted district judges to be seated only by “joint ballot of both Houses of Congress.”²⁰⁴ When the trial was eventually held at Velasco during the summer of 1836, Franklin ruled that the *Pocket* was a lawful prize of war.²⁰⁵ While it is assumed Judge Franklin applied principles of admiralty law, it is not certain because the Republic had yet to create or adopt any actual laws, maritime or otherwise.²⁰⁶

The legality of Judge Franklin’s appointment was subsequently largely mooted because the first Republic Congress, in essence, “ratified” Franklin’s appointment by electing him one of the first four Associate Judges in Texas, the first to preside over the Second Judicial District.²⁰⁷ He served

at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 173.

²⁰⁴ TEX. CONST. art. IV, § 9 (1836); see *Short History*, 65 TEX. L. REV. at 240.

²⁰⁵ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16; *Early Judicial History*, 12 TEX. L. REV. at 323.

²⁰⁶ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16; *Early Judicial History*, 12 TEX. L. REV. at 323. Texas did not adopt the common law of England until January 20, 1840. Act of Jan. 20, 1840, 4th Cong., R.S., reprinted in 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822–1897, at 177–78 (Austin, Gammel Book Co. 1898). However, as the Texas Supreme Court clarified twelve decades later, English common law was only adopted so far as it was consistent with Texas’s constitutional and legislative enactments, as well as the “rule of decision” in Texas. *S. Pac. Co. v. Porter*, 331 S.W.2d 42, 45 (1960). No English statutes were similarly adopted, and the Republic’s congressional act adopting English common law “was not construed as referring to the common law as applied in England in 1840, but rather to the English common law as declared by the courts of the various states, of the United States.” *Id.* This adoption is still enshrined in Texas statute to this day. TEX. CIV. PRAC. & REM. CODE § 5.001 (“The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, and the laws of this state.”).

²⁰⁷ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC’Y, Spring 2016, at 16; NARRATIVE HISTORY, at 26, 34, 235; *Sesquicentennial Celebration*, 53

in this role until 1839, when he resigned to move to Galveston and re-enter private practice.²⁰⁸ Although he was a member of the Republic Supreme Court, he never attended a session or wrote an opinion for the Court because it did not meet for the first time until the year following Franklin's retirement.²⁰⁹

During this time, he traveled briefly back to Georgia and was married there on Halloween to Eliza Brantley.²¹⁰ Eliza tragically passed away in 1843.²¹¹ He would subsequently remarry once more to Estelle Maxwell.²¹²

After statehood, Judge Franklin served four terms in the Legislature as a Representative, always as Chairman of the Judiciary Committee.²¹³ His final public-service post would be that of state senator, an office to which he won election with some 67% of the vote.²¹⁴ But before he could take the oath of office, he passed away on Christmas Day, 1873, just shy of 70 years of age.²¹⁵ Franklin County is named in his honor.²¹⁶

TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 333; *Dates of Service*, 65 TEX. L. REV. at 370-71; *Early Judicial History*, 12 TEX. L. REV. at 323; *Early Courts*, 12 TEX. L. REV. at 448, 450; SUPREME COURT HISTORY, at 16-17; BENCH AND BAR, at 173.

²⁰⁸ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 16; *Supreme Court Judges*, 65 TEX. L. REV. at 333.

²⁰⁹ NARRATIVE HISTORY, at 18-19, App'x A, at 227; LONE STAR LAW, at 15-16, 19-20; *Short History*, 65 TEX. L. REV. at 248-49; SUPREME COURT HISTORY, at 7.

²¹⁰ BENCH AND BAR, at 174.

²¹¹ *Id.*

²¹² *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 18.

²¹³ *Id.* at 16-17; *Supreme Court Judges*, 65 TEX. L. REV. at 333; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 175.

²¹⁴ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 17; *Supreme Court Judges*, 65 TEX. L. REV. at 333; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 176.

²¹⁵ *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 17; *Supreme Court Judges*, 65 TEX. L. REV. at 333; SUPREME COURT HISTORY, at 17; BENCH AND BAR, at 176.

²¹⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 333.

Fig. 18
Undated
photograph
of Associate
Judge James
W. Robinson,
courtesy of
the Texas
Collection,
Baylor
University. *See,*
e.g., Eighteen
Minutes, at 272;
Supreme Court
Judges, 65 Tex.
L. Rev. at 352.



E. Hon. James W. Robinson

Just weeks after Associate Judge James W. Robinson found himself serving as the Governor of the provisional government of Texas, he was fighting Mexican soldiers as a private at San Jacinto.

James Robinson was born before the turn of the nineteenth century in 1790 Indiana.²¹⁷ After being admitted to the Indiana bar, Robinson married in 1820.²¹⁸ His law partner during this time was future United States President William Henry Harrison.²¹⁹ After fathering five children, Robinson left his family behind

²¹⁷ *Id.* at 353.

²¹⁸ *Id.*

²¹⁹ NARRATIVE HISTORY, at 26.

and moved to Arkansas in 1828.²²⁰ His wife obtained a divorce, and Robinson remarried while in Arkansas.²²¹

Sometime around 1832, Robinson, along with his new wife and child, moved to Nacogdoches County.²²² After befriending Sam Houston, Robinson was elected Lieutenant Governor of the Republic's provisional government in 1835.²²³ When the provisional government impeached Governor Henry "Hy" Smith following a "violent clash," Robinson became acting Governor on February 12, 1836.²²⁴

David G. Burnet was elected as the interim President in early March.²²⁵ Freed from executive service, Robinson took the extraordinary step of enrolling in Mirabeau B. Lamar's cavalry corps as a private.²²⁶ A little more than two months after heading the provisional government of Texas, Robinson fought at San Jacinto as a private cavalryman.²²⁷

That December, Judge Robinson became one of the first four Associate Judges of the Republic by being elected as the

²²⁰ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353.

²²¹ *Supreme Court Judges*, 65 TEX. L. REV. at 353.

²²² *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353.

²²³ NARRATIVE HISTORY, at 26; EIGHTEEN MINUTES, at 35, 85; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353; SUPREME COURT HISTORY, at 18.

²²⁴ NARRATIVE HISTORY, at 26; BLOOD OF HEROES, at 214; EIGHTEEN MINUTES, at 35, 85; *Supreme Court Judges*, 65 TEX. L. REV. at 353; *Early Judicial History*, 12 TEX. L. REV. at 319; SUPREME COURT HISTORY, at 18. Former Governor Smith refused to surrender the seal of the office—a brass coat button in the shape of a star, which was used to make an impression upon public documents. *Supreme Court Judges*, 65 TEX. L. REV. at 353 n.359; SUPREME COURT HISTORY, at 18 n.1.

²²⁵ EIGHTEEN MINUTES, at 35–36.

²²⁶ EIGHTEEN MINUTES, at 35, 436.

²²⁷ NARRATIVE HISTORY, at 26; EIGHTEEN MINUTES, at 35, 436; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353; SUPREME COURT HISTORY, at 19.

inaugural judge of the Fourth Judicial District court.²²⁸ Aged 46 years old when he took the district court bench, he was already one of the oldest judges in Texas.²²⁹

By the time he attended the first session of the Republic Supreme Court in 1840, he was now undoubtedly the oldest member of the Court.²³⁰ However, the Friday before the Court's first session was to convene the following Monday, a petition was presented to the Republic Congress accusing Judge Robinson of "crimes of the deepest and darkest dye," including corruption, bribery, and murder.²³¹ Although he would later be vindicated, Judge Robinson resigned his office two weeks after the Supreme Court's first session convened to avoid impeachment.²³²

His retirement would prove to be even more eventful than his professional life that preceded it.

On March 19, 1840, Judge Robinson attended a meeting between representatives of the Texas government and the Comanche tribes.²³³ He attended alongside his successor on the Fourth Judicial District bench, legendary future Supreme Court Chief Justice John Hemphill.²³⁴ Judge Hemphill adjourned his court early so that the meeting could take place in his courtroom.²³⁵

²²⁸ NARRATIVE HISTORY, at 34, 235; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 353; *Dates of Service*, 65 TEX. L. REV. at 370-71; *Early Courts*, 12 TEX. L. REV. at 448; SUPREME COURT HISTORY, at 16-17.

²²⁹ NARRATIVE HISTORY, at 26.

²³⁰ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; see NARRATIVE HISTORY, at 34; *Early Courts*, 12 TEX. L. REV. at 450.

²³¹ NARRATIVE HISTORY, at 26; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.

²³² NARRATIVE HISTORY, at 26, 34; *Sesquicentennial Celebration*, 53 TEX. B.J. at 44; *Supreme Court Judges*, 65 TEX. L. REV. at 354.

²³³ NARRATIVE HISTORY, at 26; *Short History*, 65 TEX. L. REV. at 255; *Supreme Court Judges*, 65 TEX. L. REV. at 354.

²³⁴ See NARRATIVE HISTORY, at 26.

²³⁵ *Id.*; *Short History*, 65 TEX. L. REV. at 255.

The meeting was being held because several Comanche chiefs and their extended retinue had entered San Antonio under truce to discuss the terms for repatriating Texian captives they held.²³⁶ Instead of bringing the fifteen Texian captives with them to the meeting, the Comanche brought only one, a teenaged girl named Matilda Lockhart who “showed plain evidence that she had been shockingly tortured.”²³⁷ When Lockhart informed the Republic representatives that the Comanche intended to bring the surviving captives into town, one-by-one, so as to maximize the price they could get for each, the Texians were enraged.²³⁸ They informed the Comanche that they would be held hostage until all the captives were safely returned en masse.²³⁹ The skirmish that ensued has been called the “Council House Fight.”²⁴⁰ During the fighting, Judge Robinson was wounded, and Judge Hemphill disemboweled one of the Comanche chiefs with his Bowie knife after being attacked himself.²⁴¹

Two years later in September 1842, Judge Robinson was back in San Antonio attending a district court hearing when the Mexican army under General Adrian Woll invaded and took the entire court prisoner, including the attorneys, jury, and bystanders.²⁴² This number included the sitting district judge (himself also an Associate Judge of the Republic Supreme Court), former Associate Judge Robinson, and future Associate Judge William E. Jones.²⁴³ While being held prisoner in Mexico, Judge Robinson offered his services to Santa Anna

²³⁶ NARRATIVE HISTORY, at 26.

²³⁷ *Id.*

²³⁸ *See id.*

²³⁹ *Id.*; *Short History*, 65 TEX. L. REV. at 255.

²⁴⁰ NARRATIVE HISTORY, at 26–27; *Short History*, 65 TEX. L. REV. at 255; *Supreme Court Judges*, 65 TEX. L. REV. at 354.

²⁴¹ *Short History*, 65 TEX. L. REV. at 255; *see* NARRATIVE HISTORY, at 27; *Supreme Court Judges*, 65 TEX. L. REV. at 354.

²⁴² *Short History*, 65 TEX. L. REV. at 263–64; *Supreme Court Judges*, 65 TEX. L. REV. at 354; *Early Judicial History*, 12 TEX. L. REV. at 324.

²⁴³ *Short History*, 65 TEX. L. REV. at 264 n.158; *Early Judicial History*, 12 TEX. L. REV. at 324.

as a peace emissary, who released him to secure an armistice with President Houston.²⁴⁴

Perhaps in part due to the Gold Rush or to his dissatisfaction with the inherent risks of practicing law on the Texas frontier, Judge Robinson emigrated to California in 1849.²⁴⁵ After serving as a district attorney and school commissioner there, Judge Robinson passed away a wealthy man in San Diego in October 1857.²⁴⁶

F. Hon. Richardson A. “Dick” Scurry

Associate Judge Richardson “Dick” Scurry rode to San Jacinto alongside General Sam Houston, manned the “Twin Sisters” at San Jacinto, and would later serve as a Congressman both to the Republic and to the United States.

Scurry was born in Gallatin, Tennessee on November 11, 1811.²⁴⁷ An extremely bright student in his youth, Scurry was said to have mastered the first six books of Euclid in just three weeks.²⁴⁸

Scurry was admitted to the Tennessee bar in 1830, and began his law practice in Covington, Tennessee.²⁴⁹ At some point in early 1836, Scurry heeded the call to come to Texas’s aid, arriving at Washington-on-the-Brazos by March 1836.²⁵⁰

General Houston was named Commander-in-Chief of the

²⁴⁴ *Supreme Court Judges*, 65 TEX. L. REV. at 354; SUPREME COURT HISTORY, at 19.

²⁴⁵ *Supreme Court Judges*, 65 TEX. L. REV. at 354; SUPREME COURT HISTORY, at 19.

²⁴⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 354; *see* SUPREME COURT HISTORY, at 19.

²⁴⁷ *Supreme Court Judges*, 65 TEX. L. REV. at 356; BENCH AND BAR, at 178.

²⁴⁸ BENCH AND BAR, at 178; *see* *Supreme Court Judges*, 65 TEX. L. REV. at 356.

²⁴⁹ *Supreme Court Judges*, 65 TEX. L. REV. at 356.

²⁵⁰ *Id.*; BENCH AND BAR, at 179; *see* EIGHTEEN MINUTES, at 16.

Texian army on March 4, 2017.²⁵¹ He departed Washington-on-the-Brazos two days later to join his troops at Gonzales.²⁵² In tow with General Houston were “two aides-de-camp, one captain, and a youth”—24 year-old Dick Scurry.²⁵³

On the banks of the Brazos River on April 14, 1836, Scurry was assigned as First Sergeant in the artillery corps—whose duty it was to man the Twin Sisters.²⁵⁴ The Twin Sisters were two cannons (probably six pounders) that had been cast in and gifted by the townspeople of Cincinnati, Ohio to the Texians to aid in their quest for independence.²⁵⁵ Though undersized compared to the nine-pound Golden Standard, the Twin Sisters proved invaluable to the Texian army’s victory at San Jacinto both militarily and emotionally as their “roar ... inspire[ed] ... the foot soldiers.”²⁵⁶ Indeed, determined and accurate fire from the Twin Sisters ensured Santa Anna’s Golden Standard fired only three rounds before being abandoned and later captured.²⁵⁷



Fig. 19 – San Jacinto Battleground marker showing the location of Santa Anna’s camp. Photo by Dylan O. Drummond, taken on Texas’s 181st Independence Day, March 2, 2017.

²⁵¹ EIGHTEEN MINUTES, at 15.

²⁵² *Id.* at 16–17.

²⁵³ *Id.* at 16–17, 213; *Early Judicial History*, 12 TEX. L. REV. at 320. Judge Scurry arrived with General Houston in Gonzales on March 11, 1836. EIGHTEEN MINUTES, at 43.

²⁵⁴ EIGHTEEN MINUTES, at 211, 213, 436.

²⁵⁵ *Id.* at 152–53.

²⁵⁶ *Id.* at 264–67, 325, 333–34.

²⁵⁷ *Id.* at 333–34, 367.

Scurry's "gallantry and good conduct" at San Jacinto was such that he received a battlefield promotion to lieutenant.²⁵⁸

Following San Jacinto, Scurry was appointed as the district attorney for the First Judicial District.²⁵⁹ He was later elected as the first judge of the Sixth Judicial District bench on January 30, 1840, where he served until resigning on February 5, 1841 to serve as district attorney for the Fifth Judicial District.²⁶⁰ It was during his service on the Sixth Judicial District that Judge Scurry wrote three opinions for the Republic Supreme Court's January 1841 term.²⁶¹

From November 1842 until February 1844, Scurry served in the Republic House of Representatives during the Seventh and Eighth Congresses, and was elected Speaker of the Republic House during the Eighth Congress.²⁶² During these years, Judge Scurry met and married his wife, Evantha Foster, in 1845.²⁶³

After annexation, Judge Scurry was elected as the district judge for Red River County.²⁶⁴ In 1851, he was elected to represent Texas as one of her congressmen in the United States House of Representatives.²⁶⁵

Judge Scurry died at his home in Hempstead on April 3,

²⁵⁸ BENCH AND BAR, at 179.

²⁵⁹ *Supreme Court Judges*, 65 TEX. L. REV. at 357.

²⁶⁰ *Id.*; *Dates of Service*, 65 TEX. L. REV. at 371; see NARRATIVE HISTORY, at 235; *Early Courts*, 12 TEX. L. REV. at 450; SUPREME COURT HISTORY, at 16-17; BENCH AND BAR, at 179.

²⁶¹ *Supreme Court Judges*, 65 TEX. L. REV. at 356; see NARRATIVE HISTORY, at 30, 235; *Early Courts*, 12 TEX. L. REV. at 450. These opinions were: *Guest v. Guest*, No. IX, Dallam 394 (Tex. 1841), *Knight v. Huff*, No. XXI, Dallam 425 (Tex. 1841), and *Austin v. Sawyer*, No. XXVIII, Dallam 445 (Tex. 1841). *Supreme Court Judges*, 65 TEX. L. REV. at 356; see SUPREME COURT HISTORY, at 16-17.

²⁶² *Supreme Court Judges*, 65 TEX. L. REV. at 357; see BENCH AND BAR, at 179.

²⁶³ BENCH AND BAR, at 180.

²⁶⁴ *Id.*

²⁶⁵ *Supreme Court Judges*, 65 TEX. L. REV. at 357; BENCH AND BAR, at 180.

1862 due to complications arising from a wound he received in a hunting accident a decade before.²⁶⁶ Upon hearing of Scurry's passing, Sam Houston said, "There died one of the most wonderful minds I have ever known. It was a vast storehouse of legal lore."²⁶⁷

G. Hon. Robert McAlpin "Three-Legged Willie" Williamson

One of the most colorful characters of the Republic judiciary was also one of its most able, eminent, and accomplished, both in and out of the courtroom.²⁶⁸ So much so that Robert McAlpin "Three-Legged Willie" Williamson has been called the "Patrick Henry of Texas."²⁶⁹

Robert McAlpin Williamson was born in Georgia in 1806.²⁷⁰ At fifteen years of age, Williamson was stricken juvenile tuberculous arthritis (also called "white swelling"), which left him with a lame leg.²⁷¹ During the two years he spent confined to his bed

²⁶⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 357; BENCH AND BAR, at 180–81.

²⁶⁷ BENCH AND BAR, at 181.

²⁶⁸ Williamson was said to be a fine singer, an accomplished poet and storyteller, banjo player, and "a celebrated dancer—wooden leg notwithstanding." NARRATIVE HISTORY, at 24–25; *Short History*, 65 TEX. L. REV. at 246; *Supreme Court Judges*, 65 TEX. L. REV. at 364; Catherine M. Foster, *A Texas Portrait: Three-Legged Willie*, 14 TEX. B.J. 15, 53 (Jan. 1964) [hereinafter *Three-Legged Willie*]; SUPREME COURT HISTORY, at 20.

²⁶⁹ NARRATIVE HISTORY, at 24; *Supreme Court Judges*, 65 TEX. L. REV. at 364; BENCH AND BAR, at 196. One historian has said that Williamson "did as much, if not more, than any other man in precipitating and sustaining the revolution of 1835." SUPREME COURT HISTORY, at 20.

²⁷⁰ *Supreme Court Judges*, 65 TEX. L. REV. at 363 (listing 1806 as his date of birth); SUPREME COURT HISTORY, at 19 (same); BENCH AND BAR, at 194 (same). *But see* NARRATIVE HISTORY, at 24 (stating he was born in 1804); *see also Three-Legged Willie*, 14 TEX. B.J. at 15 (noting both 1806 and 1804 as his possible dates of birth).

²⁷¹ NARRATIVE HISTORY, at 24; *Supreme Court Judges*, 65 TEX. L. REV. at 363; *Three-Legged Willie*, 14 TEX. B.J. at 15; SUPREME COURT HISTORY, at 19; BENCH AND BAR, at 194.

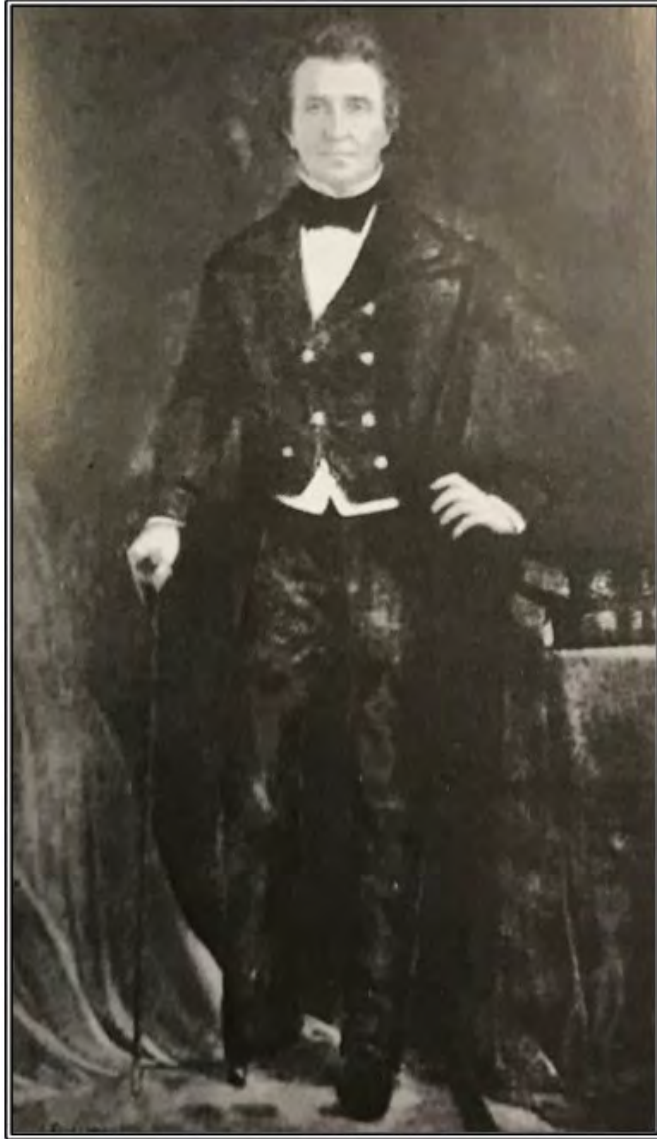


Fig. 20 - Undated painting of Associate Judge Robert M. Williamson, courtesy of the Texas Collection, Baylor University. *See, e.g.*, James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986*, 101 (2013) (reproduced from the *Texas Bar Journal* photo collection, Archives of the State Bar of Texas); James Donovan, *The Blood of Heroes: The 13-Day Struggle for the Alamo—and the Sacrifice that Forged a Nation*, pictorial insert (2012); James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 *Tex. L. Rev.* 237, 247 (Dec. 1986).

fighting the malady, Robinson studied and mastered language and mathematics.²⁷² After he emerged from his convalescence, Williamson strapped a wooden peg to his lame leg, which was tied behind him at the knee.²⁷³ His resulting appearance gave him the lifelong nickname of “Three-Legged Willie.”²⁷⁴

Williamson was admitted to the Georgia Bar at the age of twenty-one, but soon left for Texas in 1826 or 1827 after he dueled with another gentlemen defending the “moral character of a young lady.”²⁷⁵ He settled in San Felipe, and soon distinguished himself in local affairs.²⁷⁶ He established and edited one of the first newspapers in Texas (the *Cotton Plant*) from 1829 to 1831, served as the San Felipe City Attorney (the *sindeco procurador*), as well as its Mayor (*alcalde*) in 1833.²⁷⁷ During this time he befriended another noted San Felipe lawyer named William Barrett Travis.²⁷⁸ Both began to play a prominent role in the burgeoning Texas revolution, participating in the Anahuac disturbance in 1832 and co-signing the Turtle Bayou Resolution

²⁷² NARRATIVE HISTORY, at 24; *Three-Legged Willie*, 14 TEX. B.J. at 15.

²⁷³ NARRATIVE HISTORY, at 24; EIGHTEEN MINUTES, at 80; *Supreme Court Judges*, 65 TEX. L. REV. at 363; *Three-Legged Willie*, 14 TEX. B.J. at 15; SUPREME COURT HISTORY, at 19; BENCH AND BAR, at 194.

²⁷⁴ NARRATIVE HISTORY, at 24; EIGHTEEN MINUTES, at 80; *Supreme Court Judges*, 65 TEX. L. REV. at 363; *Three-Legged Willie*, 14 TEX. B.J. at 15; SUPREME COURT HISTORY, at 19; BENCH AND BAR, at 194.

²⁷⁵ NARRATIVE HISTORY, at 24 (estimating he left Georgia in 1827); *Supreme Court Judges*, 65 TEX. L. REV. at 363 (same). *But see* EIGHTEEN MINUTES, at 80 (placing the date of his immigration to Texas at 1826); BENCH AND BAR, at 194 (same); *see also Three-Legged Willie*, 14 TEX. B.J. at 16 (listing both dates and sources for each).

²⁷⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 363; SUPREME COURT HISTORY, at 19–20; BENCH AND BAR, at 194.

²⁷⁷ EIGHTEEN MINUTES, at 80; *Supreme Court Judges*, 65 TEX. L. REV. at 363; *Three-Legged Willie*, 14 TEX. B.J. at 16; SUPREME COURT HISTORY, at 20.

²⁷⁸ BLOOD OF HEROES, at 19; *see Supreme Court Judges*, 65 TEX. L. REV. at 363–64.

the same year.²⁷⁹ These actions earned the pair arrest warrants personally issued by Santa Anna.²⁸⁰

As the revolution began in earnest, Williamson was made the first commander of the Texas Rangers on November 28, 1835, earning the rank of major.²⁸¹ Indeed, Williamson received one of Travis's first pleas for Alamo reinforcements while riding between Bastrop and Gonzales with three Ranger companies he raised.²⁸² He immediately headed to Gonzales to gather every man he could to ride to the Alamo's aid.²⁸³ Williamson sent a message back to the Alamo defenders with lieutenant James Bonham, imploring Travis to hold out until reinforcements from Goliad and Gonzales arrived.²⁸⁴ Williamson signed the letter, "Your true friend."²⁸⁵ Williamson's message later cheered the weary Alamo garrison's flagging spirits.²⁸⁶

Around April 7th or 8th, General Sam Houston relieved Williamson of command of his Ranger regiment for allowing some of his drunken men to kill two Mexican prisoners without first being questioned.²⁸⁷ He would later fight at San Jacinto as a cavalry private under the command of his Georgian cousin, Mirabeau B. Lamar.²⁸⁸ Williamson is said to have offered the following prayer just before the fighting commenced on the San Jacinto plain:

O, Lord, we are about to join the battle with superior numbers of the enemy, and we beseech Thee to march

²⁷⁹ *Supreme Court Judges*, 65 TEX. L. REV. at 363.

²⁸⁰ BLOOD OF HEROES, at 20–21.

²⁸¹ EIGHTEEN MINUTES, at 80; *Supreme Court Judges*, 65 TEX. L. REV. at 364.

²⁸² BLOOD OF HEROES, at 213; EIGHTEEN MINUTES, at 80.

²⁸³ BLOOD OF HEROES, at 214, 231.

²⁸⁴ *Id.* at 245.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 180.

²⁸⁸ Compare *id.* at 436–37, with *Supreme Court Judges*, 65 TEX. L. REV. at 364; see *Three-Legged Willie*, 14 TEX. B.J. at 16.

with us into the fray. But, Heavenly Father, *if You can't see Your way clear to do that, then for Christ's sake don't help those Mexicans, but just lay low* and keep dark, and You'll see the—damnedest fight since the Battle of Jericho.²⁸⁹

Following San Jacinto, Williamson was held in such high regard that he was one of the first four judges elected to serve the district courts and Republic Supreme Court on December 16, 1836.²⁹⁰ He not only was the first judge of the Third Judicial District, Judge Williamson is also credited with convening the first regular session of any district court in the Republic.²⁹¹ This first district court session was held in Columbus (which had not yet been rebuilt since being burned in the Runaway Scrape) beneath “a huge oak tree, with Three-Legged Willie sitting on a powder keg, his docket book and a pistol lying on a dry goods box in front of him, and a loaded shotgun at his knee.”²⁹² To convene the proceedings, Judge Williamson shouted, “Hear ye! Hear ye! Court for the Third District is either now in session, or by [God] somebody's going to get killed!”²⁹³

²⁸⁹ *Three-Legged Willie*, 14 TEX. B.J. at 54 (emphasis added).

²⁹⁰ NARRATIVE HISTORY, at 34, 235; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Supreme Court Judges*, 65 TEX. L. REV. at 364; *Dates of Service*, 65 TEX. L. REV. at 370–71; *Three-Legged Willie*, 14 TEX. B.J. at 16; *Early Courts*, 12 TEX. L. REV. at 448; SUPREME COURT HISTORY, at 16–17; SUPREME COURT HISTORY, at 20; BENCH AND BAR, at 195.

²⁹¹ NARRATIVE HISTORY, at 101; *Three-Legged Willie*, 14 TEX. B.J. at 16. This is because Judge Franklin's adjudication of the *Pocket* case during the summer of 1836 was irregular in that it was convened outside the requirements established by the Republic Constitution. *First Republic Judge*, J. TEX. SUP. CT. HIST. SOC'Y, Spring 2016, at 16; *Short History*, 65 TEX. L. REV. at 246; *Supreme Court Judges*, 65 TEX. L. REV. at 332 n.188; *Early Judicial History*, 12 TEX. L. REV. at 321–22; see BENCH AND BAR, at 173; see TEX. CONST. art. IV, § 9 (1836); see also *Short History*, 65 TEX. L. REV. at 240.

²⁹² *Short History*, 65 TEX. L. REV. at 246; see *Three-Legged Willie*, 14 TEX. B.J. at 16; see NARRATIVE HISTORY, at 25.

²⁹³ *Three-Legged Willie*, 14 TEX. B.J. at 16; see *Short History*, 65 TEX. L. REV. at 246.

In this manner, Judge Williamson has been described as “almost single[-]handedly ... [bringing] Anglo-Texas law to the tough, lawless country between the Guadalupe and the Sabine.”²⁹⁴

Another example of his unique if likely necessary brand of courtroom decorum is evidenced by a court session he later presided over in Shelby County.²⁹⁵ Shelby County was on the wild frontier, known to be a haven for outlaws and worse, and where the Regulator-Moderator War had broken out.²⁹⁶ Judge Williamson was asked by Republic officials to convene the first district court proceeding in Shelby County, despite county residents voting the night before the court session was to open that they needed no court.²⁹⁷ After the court was called to order the following day, one ruffian demanded the case against him be dismissed.²⁹⁸ When Judge Williamson asked what authority the man relied upon for such a dismissal, the brigand drew his Bowie knife and drove it into the bench, declaring “This sir, is the law of Shelby County!”²⁹⁹ Unfazed, the old Texas Ranger leapt to his feet and drew his horse pistol and replied, “If that’s the law in Shelby County, then this is the Constitution of Texas that overrules your law!”³⁰⁰ Needless to say, the case proceeded without further disruption.³⁰¹

Judge Williamson wed Mary Jane Edwards in 1837, and

²⁹⁴ *Three-Legged Willie*, 14 TEX. B.J. at 15.

²⁹⁵ NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261; *Three-Legged Willie*, 14 TEX. B.J. at 16, 52.

²⁹⁶ NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261.

²⁹⁷ *Short History*, 65 TEX. L. REV. at 261; *Three-Legged Willie*, 14 TEX. B.J. at 16.

²⁹⁸ NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261; *Three-Legged Willie*, 14 TEX. B.J. at 16.

²⁹⁹ NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261; *Three-Legged Willie*, 14 TEX. B.J. at 52.

³⁰⁰ *Three-Legged Willie*, 14 TEX. B.J. at 52; see NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261. This very likely may be the first recorded instance of someone unwisely bringing a knife to a gunfight. See *THE UNTOUCHABLES* (Paramount Pictures 1987).

³⁰¹ NARRATIVE HISTORY, at 25; *Short History*, 65 TEX. L. REV. at 261; *Three-Legged Willie*, 14 TEX. B.J. at 52.

resigned from the court in 1839 to serve in the Republic Congress.³⁰² Because he left the bench before the Republic Supreme Court ever formally convened its first session, he never attended a Court hearing or wrote an opinion.³⁰³

He served five terms in the Republic Congress until statehood, representing Washington and Milam Counties.³⁰⁴ After Texas was annexed into the United States, Robinson served as a state senator during the first two legislatures, retiring in 1848.³⁰⁵ Such a strong proponent of annexation was Judge Williamson that he named one of his seven children, “Annexus.”³⁰⁶

He lived out his retirement with his wife and children on their farm near Independence in Washington County.³⁰⁷ He later fell ill in 1857 and suffered his wife’s death the following year in 1858.³⁰⁸ He followed her the next year on December 22, 1859.³⁰⁹ Williamson County was established in 1838 in his honor.³¹⁰

³⁰² NARRATIVE HISTORY, at 25; *see Supreme Court Judges*, 65 TEX. L. REV. at 364; *Three-Legged Willie*, 14 TEX. B.J. at 53.

³⁰³ NARRATIVE HISTORY, at 18–19, App’x A, at 227; LONE STAR LAW, at 15–16, 19–20; *Short History*, 65 TEX. L. REV. at 248–49; SUPREME COURT HISTORY, at 7.

³⁰⁴ *Supreme Court Judges*, 65 TEX. L. REV. at 364; *Three-Legged Willie*, 14 TEX. B.J. at 52–53; SUPREME COURT HISTORY, at 20; BENCH AND BAR, at 195.

³⁰⁵ *Supreme Court Judges*, 65 TEX. L. REV. at 364; SUPREME COURT HISTORY, at 20; *see* BENCH AND BAR, at 195.

³⁰⁶ *Supreme Court Judges*, 65 TEX. L. REV. at 364; *Three-Legged Willie*, 14 TEX. B.J. at 52–53.

³⁰⁷ *Three-Legged Willie*, 14 TEX. B.J. at 53; BENCH AND BAR, at 195–96.

³⁰⁸ *Three-Legged Willie*, 14 TEX. B.J. at 53; SUPREME COURT HISTORY, at 21; BENCH AND BAR, at 196.

³⁰⁹ *Supreme Court Judges*, 65 TEX. L. REV. at 364; *Three-Legged Willie*, 14 TEX. B.J. at 53; SUPREME COURT HISTORY, at 22; BENCH AND BAR, at 196.

³¹⁰ *Supreme Court Judges*, 65 TEX. L. REV. at 364.



Fig. 21
The San Jacinto
Monument.
Photo by Dylan
O. Drummond,
taken on
Texas's 181st
Independence
Day, March 2,
2017.

IV. CONCLUSION

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 (even when it just was a powder keg beneath an oak tree) cemented the Texas Supreme Court's lineage and legacy that continues to this day.